IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 97-03522-CA

DIVISION: CV-H

ANGELA B. WIDDICK, as Personal Representative of the Estate of ROLAND E. MADDOX, deceased,

Plaintiff,

vs.

BROWN & WILLIAMSON TOBACCO CORPORATION, a foreign corporation; LIGGETT GROUP, INC., a foreign corporation; and WINN-DIXIE STORES, INC., a Florida corporation,

Defendants.

PROCEEDINGS held before The Honorable Charles O. Mitchell, Jr., at the Duval County Courthouse, 330 East Bay Street, Jacksonville, Florida, on Monday, June 1, 1998.

Ô _ _õ(_ 0*0*0*°_°__ ÔŒ 25 THE COURT: All right. Mr. Nyhan, are you

ready to proceed?

MR. NYHAN: Yes, Your Honor, we are.

THE COURT: Call your first witness.

MR. RILEY: Your Honor, Brown & Williamson calls Dr. Joseph Tulchin as our first witness.

THE COURT: All right. Dr. Tulchin, if

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you would just come up and have a seat on the witness stand. I will swear you once you are seated, sir.

Good morning.

THE WITNESS: Good morning, sir.

THE COURT: Would you raise your right hand, please. Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

THE COURT: Thank you, sir.

Mr. Riley, you may proceed any time.

MR. RILEY: Thank you, Your Honor.

JOSEPH TULCHIN,

having been produced and first duly sworn as a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION

BY MR. RILEY:

Q Good morning, Dr. Tulchin.

A Good morning, sir.

Q Would you please tell the jury your full name.

A Joseph Tulchin.

Q And who do you work for?

A The Woodrow Wilson International Center for Scholars.

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Q And would you please tell the jury what the Woodrow Wilson Center is.

A The Woodrow Wilson Center is a memorial that President Woodrow Wilson created by the Congress of the United States in 1968. It serves as a public facility for the study of policy issues of concern to the United States and other nations.

Q And where is it located?

A Washington, D.C.

Q And what position do you have at the Wilson Center?

A I'm the director of the Latin American program there.

Ô _ _õ(_ 0*0*0*°_°__ ÔŒ Q And would you please tell the jury what that program is?

A The Latin American program focuses on issues of concern to Latin America and to the United States in its relations with Latin America.

Q What kind of issues?

A Well, issues like poverty, economic development, security issues, arm sales, drug certification, anything that concerns the relations between the United States and the rest of the hemisphere.

Q And how long have you been involved with the Woodrow Wilson Center?

A I've been there for nine years.

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Q Now, do you have a field of expertise?

A Yes, sir.

Q What is that field?

A Fields of Latin American history and the history of the United States foreign policy.

Q What is your training in, your basic training?

A History.

Q And how long have you been working in the field of history, Dr. Tulchin?

A About 40 years.

Q Okay. Have you taught history?

A Yes, sir.

Q And where have you taught history and when?

A I began teaching at Yale University in Connecticut and then taught at Chapel Hill, North Carolina, at the University of North Carolina.

Q And when were you at Yale and when were you at North Carolina?

A I went to Yale after finishing my graduate work in 1964 and moved to Chapel Hill in 1971.

Q And you were at Chapel Hill until?

A 1990.

Q And that's when you went to Wilson?

A That's correct.

Q Now, you said that your expertise is in

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13 Latin American history?

14 A That's correct.

15 Q And in your study of Latin American

16 history and Latin American affairs, have you become

17 familiar with issues related to tobacco?

18 A Absolutely.

19 Q And would you tell the jury just briefly

20 has tobacco been important in the history of the

21 Americas?

Ô _ _õ(
0*0*0*°_°__ ÔŒ 22 A Well, tobacco enters American history with

23 the first voyage by Christopher Columbus. It's one

24 of the major issues he talks about, and he brings

25 some back with him to Spain on his return from the

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1 New World. And, of course, it becomes a major crop

2 in the American colonies and important to George

3 Washington, for example, who grew tobacco on his

4 farm.

5 Q Now, Dr. Tulchin, have you been asked in

6 connection with this case to come and explain to the

7 jury the issue of public awareness or common

8 knowledge regarding cigarette smoking and health

9 prior to the year 1969?

10 A Yes, sir.

11 Q And have you been asked to come and

12 discuss with us the extent to which consumers are

13 aware of the relationship, or were aware of the

14 relationship between smoking and cancer prior to

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1969?

A Yes, sir, that is correct.

Q And have you also been asked to discuss with us the extent to which there has been common knowledge that smoking could be a difficult habit to break or that it could be hard to stop smoking? Have you been asked to do that as well?

A Yes.

Q And are you prepared to discuss those issues for the jury?

A Yes, sir.

Q Before we get to your opinions in the case, Doctor, I'd like to go through your educational background. Can you tell us where you went to school and what your degrees are?

A I was an undergraduate at Amherst College in Massachusetts. I spent a year studying history at the Cambridge University in England, and then I did my graduate work at Harvard University in Massachusetts.

Q And did you obtain a degree from Harvard?

A I had a Ph.D. in history.

Q And what year did you obtain that degree?

A 1965.

Q And you said your Ph.D. is in what field?

A History, United States history.

Q How long did it take you to get your Ph.D.

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in history?

A Four and a half years.

Q And would you please explain the process of studying for a Ph.D. and explain why it takes four and a half years or took you four and a half years to get your Ph.D. in history?

A It is a process of training, training professionals to conduct research in historical method, research using evidence re-creation of

history and learning how to disseminate that research to audiences in the form of teaching to students and to the people so that anyone who is interested in reading history can read more useful and intelligent books.

Q Are you a member of any professional associations?

A I'm a member of the American Historical Association, the Latin American studies Association, the International Studies Association, and the Society for Historians of American Foreign Relations.

Q Have you published articles in the field of history?

A Yes, sir.

Q How many articles approximately?

A Approximately 100.

Q Are they published in historical journals, peer review journals?

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20 A Yes, they are.

21 Q And can you tell us some of the journals
Ô _ _õ(_ 0*0*0*°_°__ ÔŒ 22 that you have published?

23 A Current History, Journal of American

24 History, Journal of InterAmerican Studies and World

25 Affairs, among others.

1 Q And have you written any books?

2 A I have.

3 Q How many books have you written?

4 A I have written five books and edited

5 twenty-five others.

6 Q Now, do any of the books or articles that

7 you've written in the past deal at all with the

8 issue of public knowledge?

9 A Yes, they do.

10 Q And can you tell us about your study of

11 public knowledge in the course of your career, what

12 issues you've looked at?

13 A Well, the very first article I published

14 35 years ago dealt with public awareness in the

15 United States concerning the efforts to control

16 certain colonies of Spain, Cuba, and Puerto Rico,

17 and what led to the Spanish-American war. There was

18 a study of what people knew about that at that time.

19 And my most recent book just five years

20 ago dealt with United States relations to Argentina

21 and was an effort to compare what those two
Ô _ _õ(_ 0*0*0*°_°__ ÔŒ 22 countries knew about one another and how the

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differences in their understanding and public awareness affected their relations with one another.

Q Have you ever testified as an expert

witness before?

A No, I have not.

Q And, Doctor, have we agreed to compensate you for the amount of time you have spent working on this case?

A Yes, sir.

Q And what is the hourly rate that you're charging us on this case?

A I charge $250 an hour.

Q And is that your usual consulting rate?

A Yes, it is.

Q And give us an approximation of how much we have compensated you for the amount of time that you have spent on this case?

A Approximately $25,000.

Q And is that -- tell us how much time you have spent working on this case, how many hours does that represent?

A Well, that represents 100 hours of my time, and research assistants working with me on that have worked other hours.

Q Now, would you please tell us, Doctor, generally what historians do, what is it that they do?

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25 A Historians are trained to look at a period

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1 in the past and learn first of all what information
2 is available, what sources, we call them, are
3 available, and to map the full canvass of those
4 sources to understand the context in which people
5 lived.
6 And then we're trained to evaluate the
7 evidence that is available to us about people, about
8 the past, so that we can make judgments about why
9 people did what they did and suggest what might have
10 happened. We try to re-create the past, based upon
11 our knowledge of the evidence available.
12 Q When you said "evaluate the evidence,"
13 what did you mean?
14 A If you are trained to establish a context,
15 an historical context, then the training involves
16 weighing the role of any piece of evidence in that
17 entire weight or entire canvass of evidence.
18 Q And why is the study of history important,
19 Dr. Tulchin?
20 A We study history to understand ourselves.
21 We study history to learn how we learn about our
Ô _ _õ(_ 0*0*0*°_°__ ÔŒ 22 lives and we study history to try and understand how
23 other people dealt with the same kinds of problems
24 that we have to deal with.
25 Q And you told us part of your training was

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in the method of history. What is that called?

A Well, generally speaking it's called historical method.

(Change of reporter, 9:45 a.m.)

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Q And please explain to us what that means.

A It involves the definition or indication of sources, the careful mounting of evidence and the building of a credible picture about what the past was like, what people thought about, what they knew, and how we know about them.

Q And is it important to apply that method in studying history?

A Well, we believe it's important to study history to understand how people in a particular time period actually thought about their own lives and what they knew about their environment, so that we don't project onto them our knowledge of a particular situation or our prejudices and values.

Q And are you familiar -- what does the term social history refer to?

A Social history is an effort to define a particular concern among historians, to recapture the lives of ordinary people.

The best way I think to distinguish social history from history generally is to indicate that most history traditionally had been about famous people; kings, presidents, people who left formal documents behind.

Beginning around 1950 historians became

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concerned with people in history whose records weren't kept in archives, and there became great concern and a new method of studying, what we call history from the bottom up, history of the lives of people like us who have daily experiences and don't necessarily leave books and books behind of our correspondence.

Q So instead of studying, you said, kings and famous leaders and so forth, what does social history focus on? Who do we study in social history?

A Social history focuses on common people. We try to find out what their lives were like. We try to find out how an individual group lived. We don't focus necessarily on a single person. We focus on whole populations, whole groups, classes, professionals. We focus on different age groups and things like that.

We try to find out what each of these categories or populations did, knew, what they knew, how they acquired information, what the sources of their education might have been.

Q Okay. And is that the method that you used in your research in this case?

A That's correct.

Q And have you used this research method in prior research that you've taken in the course of

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your career?

A I've been using it for quite a while, yes, sir.

Q And have you used this same method to research issues of public knowledge in prior research assignments that you've undertaken?

A Yes, I have. It was used in the article I mentioned earlier back in the '60s on U.S. social history.

Q Now, when historians study the past do they try and understand the full context of an era or do they focus on just a part or a segment of an era? What's their goal?

A You always begin establishing the context. You can't study a particular issue or focus on a particular problem without first establishing the context in which it occurs.

If you reverse that process, you run the risk of misrepresenting the past, of projecting your own sense of the past or of weighing incorrectly the piece of evidence that may fall into your hands through one means or another.

You start with the broad context, establish that to the best of your ability and then you begin to focus as your interests suggest.

Q And when you study the past, do you study it as it existed or do you try and judge it based

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on what is known today and what's known now?

A The goal is to understand the period you're studying in its own terms, to understand people as they lived their lives, and avoid what we call the era of present-mindedness.

Q What's that?

A It's to assume that somebody living 100 years ago or 50 years ago thought as I think, knew what I know and was surrounded by people as I am today with their values, with their customs, with their laws, and that is to misinterpret how people lived in the past.

Q Do you try to separate current values from what was existing at the time period under study?

A Yes, sir.

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Q And why is that important from an historical point of view?

A So that we can understand people in their own time and try better to understand why they did

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what they did and how they acted and what they knew in order to make decisions.

Q And were you taught, while you were studying, the importance of placing historical events in context? Is that part of what you were taught?

A Yes, sir, it is.

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Q And is that part of what you have tried to teach your students during the course of your teaching career?

A Yes, that's what we hammer into our students as we train them.

Q And you hammer it into them?

A As best we can.

Q What was your assignment in this case?

A I was asked to look at the history of public awareness about the links between smoking and hazards to health.

Q And did that include the issue of common knowledge?

A Especially concerning what people knew, what the common knowledge about smoking and health was at different periods in history.

Q And what does common knowledge refer to, Dr. Tulchin?

A Common knowledge is what any of us would expect the others to know. It's things -- you walk into a church, you walk into a coffee shop, a social hour -- the people you're talking with are expected to know pretty much what you do about the subject.

Q Can you give us some examples of things that would be common knowledge?

A Don't drink and drive. Don't walk under

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a tree during a lightning storm.

Q Those are examples of common knowledge?

A (Nods head affirmatively)

Q Where does common knowledge come from? How do we get it?

A It comes from all over, all around us. It comes from our experience, our daily lives. It comes from our education. It comes from our parents, our friends. It's inherited, passed on. It's part of our experience and it's also part of our observation.

Q You said it's passed on?

A Yes, sir.

Q In order to determine common knowledge, do you have to study the past?

A Go back to find the origins of something

we imagine or something we expect is part of common knowledge, and so we study history of that information to see how far back it goes and how -- we're also interested in how it's transmitted.

Q How is common knowledge transmitted over time?

A As I indicated, it's transmitted in our textbooks and schools. It's transmitted through all the public media, print, nonprint. In the 20th century it's transmitted by television, radio, films, songs, all kinds of activities. It would

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be -- not literally, but would be all around us.

Q And for this case how did you go about determining common knowledge with respect to smoking and health prior to 1969? What did you do?

A Well, I began by trying to fix the broad context of information available to people in the generation in question.

Q What years did you focus on?

A I focused on '40s, '50s and '60s.

Q Okay.

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A You begin by first trying to, as I said earlier, sort of paint the whole canvas, looking at national media, newspapers, The New York Times, The Washington Post. And then you look at other

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magazines that might have reflected national concerns, Time, Life, popular magazines that may have transmitted news in different ways; perhaps less formal ways, Reader's Digest, Saturday Evening Post, Life, to see what kinds of information was being communicated on a national level to anybody who might be interested.

Q Did you also look at popular culture?

A Yes, we did.

Q Tell me what that means.

A Popular culture is the kinds of activities and information of everyday life. Songs. They would be the way in which people

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portray others in movies, for example. They would be fiction. It would be your entertainment, any kind of activity that's part of -- that contributes to or reflects common knowledge.

Q You said you focused on the 1940s, '50s and '60s. Did any of your research go back earlier in time?

A Oh, absolutely.

Q How far back did you go?

A Well, we went back to -- we went back to Columbus, in fact, and then we traced the interest in smoking, particularly the expressions of linkage

between the dangers of smoking or the linkage between smoking and health hazards through time, right up to the present.

Q And why did you go back that far?

A Well, one of the interesting things about common knowledge is where it comes from and how things stick and our part of the way we see lives, our lives. It's our understanding about how things work.

Without necessarily studying anything or deliberately going out to find out about something, it's there. We know it. We come to know it. And why is that? And one of the reasons is that it comes over and over and over again through time so that people don't question it anymore. And so as we began to focus on the expressions of concern

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about the health hazards of smoking, we went back in time to try and find their origins. And the further back we went, the more examples we found.

Q And was the historical research you did for this case the same or was it different from how you would approach any research project, any historical research?

A The historical method is essentially the same. What was different about this case was in

appreciating the context of the case we also used sources that were particular to the locality in which the people lived and the time at which they lived.

Q Okay. Did you read the depositions taken in this case, some of the depositions?

A I read some of them, yes.

Q Which depositions did you read?

A I read the depositions of Mrs. Maddox and two of Mrs. Maddox's daughters.

Q And why did you read those depositions?

A Well, I tried -- I needed to know at least the outlines of the context in which the research was to be conducted, so that when we move from the broad or national to the local we were moving into a region that represented the life of the people involved so that we could begin to focus more on what would be the awareness and common

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knowledge of people who lived in that place at that time.

Q And in the course of your research did you look at any scientific articles or medical articles?

A No, sir, I did not.

Q Why not?

A Well, first of all, I'm not an expert on science and I'm not sure what benefit I would have derived from reading them. But what does concern me is what people knew about science or what information they received about those articles. So I was concerned with the press coverage of those articles, not with the articles themselves, so I did not review that literature.

Q And did you look at the press coverage of the relationship between smoking and health?

A Absolutely.

Q Did you look at any internal documents of either Brown & Williamson or American Tobacco Company or any other cigarette company?

A No, sir, I did not.

Q Why didn't you look at those documents?

A Well, for the same reason, because those are not documents that necessarily would have been available to the public and they would not have shaped the common knowledge or the public awareness

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21 at that time. If there were company documents
Ô _ _õ(/ 0*0*0*°_°__ ÔŒ 22 published in the press available to anyone, you and
23 me, at that time, those documents were reviewed as
24 they would appear.
25 Q Now, based on your research and your

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1 training and your experience in the field of
2 history, Dr. Tulchin, do you have an opinion to a
3 reasonable degree of professional certainty as to
4 whether it was common knowledge among consumers
5 that cigarette smoking was associated with health
6 risks throughout the 1940s, '50s and 1960s?
7 A Yes, sir.
8 Q Would you please tell the jury your
9 opinion.
10 A It is my opinion that the public had a
11 wide awareness of the health risks of smoking
12 during this period.
13 Q Do you have an opinion to a reasonable
14 degree of professional certainty whether it was
15 common knowledge that smoking was related to
16 serious illnesses, such as cancer, back in this
17 time period?
18 A Yes, sir.
19 Q What is your opinion?
20 A It's my opinion that people living in
21 this period had an acute awareness and broad
Ô _ _õ(1 0*0*0*°_°__ ÔŒ 22 knowledge about the risks to their health,

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23 specifically to diseases like cancer, during this

24 period.

25 Q And do you have an opinion to a

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1 reasonable degree of professional certainty whether

2 it was common knowledge among consumers that

3 smoking could be difficult to stop, that it could

4 be a hard habit to break?

5 A Yes, sir.

6 Q And what's your opinion about that?

7 A Again, my opinion is that during this

8 period the public in general had a clear sense that

9 smoking was a habit, that it was a habit difficult

10 to quit, and to quit required special effort.

11 Q You told us that you went back in the

12 course of your research to Columbus, and I'd like

13 you to tell the jury what you found with respect to

14 tobacco and its discovery in the New World and what

15 happened when it was introduced into Europe. Can

16 you tell the jury about that.

17 A Well, from the very beginning tobacco was

18 seen as a source of pleasure, as habit-forming, and

19 many people considered it to be obnoxious, immoral

20 and dangerous to the health. And almost from its

21 first use in Europe you begin to get public

Ô _ _õ(3 0*0*0*°_°__ ÔŒ 22 comments about its health hazards.

23 Q Did it become popular in Europe?

24 A Yes, it did.

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25 Q Who were the people who condemned it on

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1 health grounds?
2 A Leaders of all kinds condemned it. One
3 of the most prominent has been a statement by the
4 King of England in 1604, King James.
5 Q And, Doctor, we've prepared some blowups
6 at your request, and I'd like to show you one of
7 those.
8 If you could, please tell the jury what
9 this is and where it appeared and its significance
10 from an historical point of view.
11 A This is a publication by King James I of
12 England 1604. And as you see, there are two
13 statements there relevant to our conversation. One
14 is that the King refers to smoking as a custom
15 loathsome to the eye, hateful to the nose, harmful
16 to the brain, dangerous to the lungs and the black
17 stinking fume thereof nearest resembling the
18 Stygian smoke of the pit --
19 Q What does Stygian mean?
20 A It refers to the River Styx, the river to
21 hell.
Ô _ _õ(5 0*0*0*°_°__ ÔŒ 22 And it goes on to say: And from this
23 weakness it proceeds that many in this kingdom have
24 had such a continual use of taking this unsavory
25 smoke, as now they are not able to forbear the

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same, no more than an old drunkard can abide to be sober, without falling into an incurable weakness and evil constitution.

Q And why is this important in terms of common knowledge, Doctor?

A Well, this is important to us for two reasons; first, the linkage of complaints, the number of complaints of it smells bad, it's a terrible habit, and then it's bad for you in your lungs, your brain, your nose and so on. So the effects of smoking, even very soon after tobacco comes back into Europe, has spread widely enough so that it's observed as to how dangerous it might be.

And the other reason is, this is a statement by the King of England. He's concerned about his people, his subjects. And we know from this that enough people were smoking, enough people were making that horrible stinking fume, as he calls it, and suffering the problems that concern, in that he feels it necessary to make a public statement about it.

And finally -- just one more thing -- this particular document is interesting to an historian because if you read the historic record,

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as I have tried do, you see it over and over and over again. It captures the imagination of people for the next 350 years.

Q I actually wanted to -- did you find other references to this over the years.

A That's right.

Q I'd like to show you one. Did you find one in the 1964 Surgeon General's reports?

A That's exactly right. That's really where it comes up and strikes the historian in the face.

MR. RILEY: May I have a moment, Your Honor?

THE COURT: Yes.

Q This is a quote from the Surgeon General's report of 1964. Can you point out the reference to the -- can you make that out, Doctor?

A Well --

Q If you need --

MR. RILEY: Your Honor, may he approach?

THE COURT: Can you see it on that screen to the right there, Doctor?

THE WITNESS: I'm sorry. Thank you, sir. That's much easier, Mr. Riley.

THE COURT: If you need to, you can go

down and read it off --

THE WITNESS: No, it's just a question of

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finding it. It's down five lines at the sentence beginning: At the same time smoking was condemned as a foul-smelling, loathsome custom -- now, loathsome is not a work most of us use today and it comes directly from that counterblast. And the author of this document in the Surgeon General's report picks it up and goes right on. He spells harmful the way we do, not the way King James does, but he goes on to say: It's harmful to the brain and lungs.

Q And why is it important, Doctor, that you see in the 1964 Surgeon General's report a reference to the counterblast to tobacco? What's the significance?

A The counterblast itself and the knowledge, the information in it, is part of popular culture. And the Surgeon General refers to it in 1964 precisely because he has the expectation that anybody out there knows what that means.

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Q Did you find other references to the counterblast in the course of your research?

A Yes, sir. We found a number of them. We have a sample of them, I think.

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Q Is there one in the "Florida Health Notes"? Do you know what the "Florida Health Notes" is?

A Yes, I do.

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Q Tell us what this is, Doctor.

A Well, the "Florida Health Notes" is a publication of the State Department of Public Health. And this particular statement in 1965 is interesting because, first of all, right off it says that nearly all Floridians have heard about the Surgeon General's Report on smoking and health which was released in 1964, or a year earlier.

And then it goes on to refer to the counterblast. It is said that the first man to smoke in Europe was later imprisoned for the devilish habit. Even King James I of England denounced the extravagant pleasure by publishing his counterblast to tobacco.

Q Is this the example of how knowledge, common knowledge is handed down from generation to generation?

Ô _ _õ(= 0*0*0*°_°__ ÔŒ A Yes, sir, it is. It's a very clear, I think.

Q Now, you told us about King James. Were there people in the early years in the founding of

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the colonies in the Americas who also condemned smoking on health grounds?

A Yes. We see early condemnation in the American colonies. One example is in the north in Massachusetts with the leader Cotton Mather who is condemning the use of tobacco amongst young

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students at that time and urging them not to smoke.

Q Did we prepare a blowup of that at your request, also?

A Yes, sir. Would you put it up, please.

Q Who is Cotton Mather?

A Cotton Mather was a preacher and public leader of the Bay Colony of Massachusetts.

Q What do you mean he was a public leader?

A He was a village elder first, a preacher, and then an elected leader of the colony.

Q What does he have to say about tobacco?

A This is a series of instructions to the young, and those who have aspirations to enter the church. If you once get into the way of smoking, there will be extreme hazard of your becoming a slave to the pipe, and ever-insatiably craving for it.

Q Now, let's talk about cigarettes in particular. When did cigarettes start to become

more popular in this country?

A Cigarettes become popular in the United States roughly after the Civil War.

Q And were cigarettes also denounced on health grounds?

A Yes, they were. As they became more popular and widely used, the denunciations became more frequent and more heated.

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Q Were there groups that campaigned against the use of cigarettes?

A Yes, there had been groups against tobacco as early as the 18th century and the 19th century. But as cigarette smoking became so widespread, particularly in cities and industrial areas of the country, groups began to organize focused specifically against cigarette smoking.

Q Tell us the names of some of those groups.

A Well, the most famous was the National Anti-Cigarette League, but there were others called the Wellness Campaign, Life and Health. The Temperance Movement included cigarettes among its objects. And there were a variety of local and national organizations trying to stamp out smoking, particularly cigarette smoking.

Q And you mentioned the National Anti-Cigarette League. What was that?

A The National Anti-Cigarette League was organized in 1899 under the leadership of one of the most famous reformers of the age, a woman named Lucy Page Gaston. Ms. Gaston was a very energetic person, involved in the Temperance Movement, the Women's Suffrage Movement, and generally spent her entire life trying to make us live better and in moral ways.

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Q Was she a leading figure of the day?

A She was very charismatic, high-profile figure, with direct relations with all the leaders of industry, government, church, what have you. She was an extraordinarily energetic person.

Q The name of her group was what?

A The National Anti-Cigarette League.

(Change of reporter, 10:15 a.m.)

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Q I take it they campaigned against cigarettes?

A They campaigned with tremendous energy and to great effect throughout the first years of the 20th century. And they had a publication, they lobbied to have laws passed against smoking and against cigarettes and mounted marches, parades, festivals, clam bakes, cake fests, you name it.

Q And you said they published a magazine against smoking?

A Yes, sir, called "The Boy."

Q Why was it called "The Boy"?

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13 A Well, one reason was that the -- the

14 primary reason is that youth is the target of

15 education efforts to stop smoking.

16 If you can stop young people from smoking,

17 you don't have to worry about them becoming caught

18 up in the habit. The object is -- of the league is

19 published right on the front page of its journal. It

20 says the object --

21 Q What is the date of this?

Ô _ _õ(F 0*0*0*°_°__ ÔŒ 22 A 1908, I'm sorry. The object -- April 1908.

23 The object of the National Anti-Cigarette League is

24 to organize a national movement for the purpose of

25 combating by all legitimate means the cigarette habit

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1 and the use of tobacco in any form by boys. And

2 then in the other highlighted section, it explains

3 precisely why they're focusing on boys.

4 Now, if I may, Mr. Riley, this is an

5 example of why to avoid present-mindedness.

6 Q Please explain.

7 A You and I might be interested as to why

8 they're focusing on boys and not young people

9 generally.

10 And it was thought then -- I can't say that

11 it is today, but it was thought then that young girls

12 were stronger morally and could withstand the

13 temptations of smoking. So the focus of the

14 educational campaign was on boys, who were considered

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to be more vulnerable to these temptations.

And it says there, Boys who are full of promise, the pride of home and the nation's hope, who started out with good intentions, but alas who are tempted, yielded and became slaves to a habit as deadly as death itself.

Q Now, did groups like this have success in terms of implementing their goals?

A Well, they achieved several of their goals. First, disseminating information and finding an echo among the population for the information and

for their campaign.

Then they succeeded also in getting state legislatures to pass laws against smoking, against the sale of cigarettes and against the use of tobacco.

And then they also were successful in putting their message into the textbooks used in the schools in many states.

Q Okay. We will see if we can break that down. What, what were the laws that they got passed?

A Well, 15 states in the Union passed laws against smoking.

Q What do you mean against smoking?

A Made it illegal to smoke cigarettes or illegal to sell and manufacture cigarettes.

Q And when were these laws passed?

A Passed variously from the 1890s on into the

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18 1920s.

19 Q Was Florida one of those states?

20 A Yes, it was. In 1889, the State of Florida

21 passed a law prohibiting the manufacture and sale of
Ô _ _õ(J 0*0*0*°_°__ ÔŒ 22 cigarettes.

23 Q I've got a copy of that law. And what does

24 the statute provide, Doctor?

25 A Manufacture or sale of cigarettes or

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1 cigarette paper in any form is hereby prohibited

2 within the State of Florida.

3 Q And can you --

4 MR. RILEY: Your Honor, can he come down

5 here? I would like him to read part of the -- I

6 would like him to read what the sanctions are for

7 selling cigarettes in the State of Florida.

8 THE COURT: All right.

9 THE WITNESS: Down here, they specifically

10 put in a penalty. Excuse me. Shall for each

11 offense be punished by a fine not exceeding $500 --

12 present-mindedness, $500 was a lot of money in those

13 days -- or by imprisonment in a county jail or hard

14 labor, not exceeding six months, or both such fine

15 and imprisonment at the discretion of the Court.

16 Q So these were pretty serious sanctions or

17 penalties for selling cigarettes; is that right?

18 A Yes, sir. In addition, I might say, that

19 there were 21 states -- in addition to the 15 that

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passed laws banning the sale of cigarettes, there were 21 states that passed laws of one kind or another making it illegal to sell cigarettes to minors.

Q How long was this law on the books?

A On the books for about five or six years.

Q Not very long?

A No. But it was replaced by a law banning the sale of cigarettes to minors.

Q And how many states altogether were there that passed laws that either prohibited cigarettes like this or that banned the sale of cigarettes to minors?

A About 35.

Q And what does that tell us about common knowledge with respect to smoking and health?

A Well, it indicates the breadth of concern for the health hazards of smoking, that society wanted to do something about that, to take advantage of the knowledge that smoking was hazardous to your health by having the state act in certain ways.

What's -- what's different at this period, this reform period, is the energy of the state in acting. The knowledge about health hazards of smoking is not new in this period. The state is taking advantage of that, just as they did with temperance, in the same period, to act against a particular behavior they thought was hazardous and

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noxious.

Q Temperance, you're talking about a reference to the prohibition movement with respect to

alcohol?

A That's correct.

Q In temperance, was there also a temperance movement with respect to tobacco?

A Absolutely. The temperance movement, in fact, announced as soon as they finished their work banning the sale of alcohol, they would move on to tobacco as their next campaign -- move on to cigarettes, excuse me, as their next campaign.

Q And you said that they also achieved success in terms of incorporating information about smoking and health into textbooks?

A Yes.

Q Do you have one of those textbooks there with you?

A I do. I have one from a slightly later period than -- than we've been talking about. This is a textbook used in the State of Florida -- I'm sorry, the State of Maryland, I beg your pardon.

Q What's the date?

A 1915. And it's called "The Primer of Sanitation and Physiology."

Q And would you give us a quote out of that book.

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25 A Yes, sir. Talking about how to teach about

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1 the health effects of tobacco and cigarette smoking
2 and why a boy should not use tobacco.
3 Everything we know about the effect of
4 nicotine indicates that it is not possible to do
5 this. This is referring to --
6 Q Do what?
7 A -- a statement just before of whether you
8 can use nicotine without harm.
9 It says that it's not possible to do this,
10 that it is a violent poison to the cells, that if
11 taken into the body in large amounts it will cause
12 death, that if constantly taken during the growing
13 years it has a very disastrous effect on development,
14 that in any amount whatsoever it has a narcotic
15 effect on the muscles and on the delicate cells of
16 the brain and that anyone who uses it will be damaged
17 by it.
18 Q Now, this is an example from Maryland?
19 A Yes, sir.
20 Q Why did -- why did you pick Maryland?
21 A Well, as I indicated in this particular
Ô _ _õ(R 0*0*0*°_°__ ÔŒ 22 case, the context of the case geographically focuses
23 us -- our interests on the states of Maryland and
24 Florida.
25 Q And this is an example of what was used in

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this time period?

A That's correct.

Q And tell -- tell the jury why, again, this is important just in terms of judging common knowledge and what was known about smoking and health.

A Well, this particular text is designed for preparing educational curricula materials for the young.

And we know from reviewing materials, for example, in the State of Maryland that there was a course like this -- the name changed -- a course like this in every grade in Maryland schools. Then we also have information about what teachers were instructed to teach in those classes.

Q How, how did you know this was taught in Maryland schools? What have you looked at?

A Well, the State of Maryland has records of what it required its teachers to teach. Most states do. The State of Maryland does.

And it has records of what teachers were required -- curriculum instructions, what textbooks were used in each grade.

Q Did you -- you showed us a quote from the "Florida Health Notes" before.

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Did you find other references in "Florida Health Notes" to cigarettes and the dangers of smoking?

A Yes, sir. They occurred quite frequently.

Q And we had a couple of those blown up at your request?

A Yes, sir. There were some early ones, again reflecting the common and reinforcing the common knowledge.

Q Tell us the date on the first one.

A 1906.

Q And what does that -- what is that time?

A Starting out, Cigarettes and the boys. Today the cigarette is looked upon by all smokers as the very worst form of tobacco addiction.

It is so cheap, it is so generally inhaled, it is often so loaded with drugs and so many times made from cigar stumps and street scrapings, excuse me, that there is every argument against its use.

A few years later in 1909, an article on the toxicity of tobacco smoke, how poisonous it is,

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it says, Ever since its introduction, the question of the harmfulness of tobacco smoking has been much debated by all classes. And in spite of the most powerful denouncment of it by conventional man, it

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has continued to be used all over the world.

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Q What is this in reference to, In spite of the most powerful denouncement? What does that mean?

A That all -- in every generation, there have been counter blasts, there have been people like King James who have been trying to get us to stop smoking.

Q Now, you told us that smoking and health was taught in the Maryland schools.

A Yes, sir.

Q Was it also taught in the Florida schools?

A It certainly was.

Q Starting when? Have you been able to determine?

A It goes back to the early part of the 20th century. And in -- the period most interesting to us, slightly later in the century, the '50s and '60s, it's taught without interruption in every grade, junior high school -- grade school, junior high school and high school in the State of Florida.

Q And how do you know that?

A We have the textbooks from all of those grades. And we know what was to be taught. We know that that subject was part of the curriculum. And we know that we have the text used in the classroom.

Q Okay. Now, who were some of the -- this

refers to denouncement of tobacco by people or by leaders.

Were there leaders in the early part of

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this century in the United States, aside from Lucy Page Gaston, who condemned smoking on health grounds?

A Oh, there were many of them. I suppose two of the most famous were folk heroes of American industrial success.

Thomas Edison and Henry Ford were two that are worth quoting because of how respected they were and how widespread their influence was in the 20th century.

Q And what did Edison and Ford say about smoking?

A They were both opposed to smoking and Edison went so far as to declare publicly that he would not allow any of his employees to smoke.

Q This is -- I don't know if -- what is the date on this?

A 1914, April 1914.

Q And what is this that we're looking at right here?

A We're looking at his published letters.

Q And what does Edison say about smoking?

A Well, he repeats what we know about the

health dangers of smoking. He says it has a violent action on the nerve centers producing degeneration of the cells of the brain, which is quite rapid among boys. Then he goes on to say, I employ no person who smokes cigarettes.

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And what is -- about ten years later, Henry Ford, in 1923, says, Thus does tobacco cloud the brain, shake the nerves and shorten the life of its users.

Q So why -- why are these statements important to determine common knowledge, Doctor?

A Well, they reflect what we know. They're repeated. And we could bring hundreds, if not thousands, of examples just like this by other people.

Ty Cobb spoke out against smoking, other sports figures did. Many, many people did and they reflected what was known. They were speaking to a public that already knew what they were mentioning. This was not revelatory or a scientific revelation forum.

Ô _ _õ(\ 0*0*0*°_°__ ÔŒ MR. RILEY: Your Honor, I'm at a logical point, if you would like to take the morning recess, or I can continue if you would like.

THE COURT: We can do it now. It's 10:30,

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ladies and gentlemen. I would like you to be back in the jury room at ten minutes to 11.

(Jury exits courtroom, recess)

THE BAILIFF: All rise, please. This court is now in session.

THE COURT: Doctor, when you want some water, just reach over. It's there for both of us.

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MR. RILEY: Your Honor, we have something to bring up with the Court. We sent over a fax advising them that we wanted to use some video clips this morning.

Woody says he didn't get the letter. I'm about at the point in my examination where I'm going to play some video clips for the jury. I would like to be able to do that without interruption in the course of the examination.

MR. WILNER: Well, the trouble is we did not receive any video. This is the first time I've seen this video clip.

We have gone out of our way and we've had so much discussion in this trial, we turned over our videos weeks in advance. There was all this stuff about make sure everybody gets it.

I'm told today that we have a letter which says movie clips may be offered. Of course, the

clips were never sent. The letter was never sent either.

I have in my possession everything that was faxed to us. And luckily, the fax machine keeps track of the pages. So we went back and looked. We were shocked to see this.

We went back and looked, page 1 through page 35 are the things I would like to tender to the Court, are the things that we got last night, and the

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letter which says no -- it says those things are enclosed and was never -- never gotten to us.

Had it been given to us, I would have immediately asked for the movie clips so I can review them and not be in this position of having to see things for the first time when they're shown to the jury. It's unfair.

MR. RILEY: Judge.

MR. WILNER: So I'm not in a position to even look at these movie clips at this time.

THE COURT: How long are they and how many of them are there?

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MR. RILEY: They're very short, Your Honor. The longest one is two minutes, and there's about three or four of them.

MR. WILNER: I haven't seen them. I mean,

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a saw a few and a juror came by and I had to stop.

THE COURT: The first thing would be for you to look at them and see if there's any objections.

MR. RILEY: Can we do that now, Your Honor?

THE COURT: I would have preferred y'all to do it during the recess.

MR. WILNER: Well, there were jurors walking in and out.

THE COURT: Well, I could have done

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something about that.

THE BAILIFF: Should I tell them there will be a slight delay?

(Off record for review of videos)

MR. RILEY: We want to show that obviously to show common knowledge and the effects of what was going on in the country at that time with respect to smoking and health.

THE COURT: Just go ahead and show all of them.

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MR. RILEY: This is Dr. Hammond, Your Honor.

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The next one, Your Honor, is Dr. Heller.

The last one, Your Honor, is a series of movie slips. Dr. Tulchin talked about them and explained to the jury how they reflected common knowledge.

THE COURT: Is that it?

MR. RILEY: That's the last one, Your Honor.

MR. WILNER: The only one we object to is Eisenhower's testimony and Hammond's testimony on the grounds that -- I would like to elaborate, if I could. May I ask the witness be excused?

THE COURT: All right. If you don't mind

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stepping outside, Doctor. Just a minute, we will call you right back.

THE WITNESS: Yes, sir.

(Witness exits courtroom)

THE COURT: All right.

MR. WILNER: Your Honor, we have no objection to -- I suppose all this evidence is being offered to establish what the public was exposed to.

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Dr. Heller, who was that longer piece, the third one who went on and said about whether cigarettes were dangerous.

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What I have an objection to is the doctor who came just before him, who was Hammond, who didn't talk about the dangers of smoking. He talked about whether the public had been warned.

That is not, in itself, the stuff that the public would -- would respond to about the smoking and health. That's being offered for the truth of the matter asserted.

In other words, if a doctor is put on from the 1550s --

THE COURT: I understand what you're saying.

MR. WILNER: Yes. The same with Eisenhower making his statement, Well, I believe that, you know, if anybody tries to quit, he can.

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That's -- that's not the same thing as public knowledge about the -- about smoking. And that tends to qualify Eisenhower as beyond what anybody would suggest.

So Eisenhower's statement about whether he thinks cigarettes -- anybody can quit is not the same -- I'm not sure where that really falls in. It's kind of a nothing to me.

But it -- it's certainly -- I think it's offered for truth of the matter asserted. Although,

it's not quite as clear in that case as the Hammond one. The Hammond one is clearly offered just to get --

THE COURT: I didn't see President Eisenhower's statement being offered for the truth of the matter asserted. In fact, just the fact that he made such a statement in a political forum, which is apparently a presidential press conference --

MR. WILNER: Yes, well.

THE COURT: So as far as the Eisenhower clip, I would overrule it.

Now, I don't know if you have an objection to any of these as not seeing them soon enough. But, I mean, I can --

MR. WILNER: I do. But I'm going to go ahead and argue --

THE COURT: I'll wait to the end of the

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time for you to make further argument. But I wanted to make sure that the record is clear that your objection is not based on that at this point.

MR. WILNER: No.

THE COURT: Okay.

MR. WILNER: I'm willing to go past -- beyond that. But I would also ask, the Heller tape is from where?

MR. RILEY: It's from the Murrow Show.

MR. WILNER: We would like under the Doctrine of Completeness to produce some other things that were also shown on the Murrow Show.

But in the interest of time, I'm willing to defer those till cross-examination. But I don't want to, to be seen as --

THE COURT: I don't necessarily have a problem with that.

MR. WILNER: Okay.

THE COURT: Now, the doctor -- the second doctor?

MR. WILNER: The second doctor.

MR. RILEY: Judge, Dr. Tulchin had explained the importance of that from an historical point of view.

Dr. Hammond, obviously, is an important figure in the whole smoking and health research in the 1950s. He's one of the leading researchers at the time. His views here are expressed about the

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dangers of smoking. And then he says people are being warned.

And Dr. Tulchin will explain the importance of that from an historical point of view and why that is important to an historian, in terms of assessing

common knowledge and whether the word was getting out about the relationship between smoking and lung cancer. This is something he relies on.

MR. WILNER: Well, the fact that he relies on it doesn't make it admissible. An expert may or may not rely on things.

THE COURT: How would Dr. Hammond know?

MR. RILEY: He was --

THE COURT: I mean, you know.

MR. RILEY: Well, that's something Mr. Wilner can ask him on cross-examination.

THE COURT: He can't ask Dr. Hammond that.

MR. RILEY: Well, but he can ask --

THE COURT: I understand what you're saying.

MR. RILEY: But, you know, first of all, we've heard a lot of the ancient document rule in this case, Your Honor. We have had a lot of stuff come in under ancient documents, our company's documents. And I think that's equally applicable here.

In any event, I think it's important, an

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important basis for Dr. Tulchin's opinion that the word is getting out because the people involved in the research believe that.

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THE COURT: All right, Mr. Riley. I'll allow it over your objection, Mr. Wilner.

Now, what -- if there are other parts to this, to the film that you want to view and determine whether or not you want to use later, then if they're provided to you, you can certainly do that.

But I don't have a problem with what is being offered at this point.

MR. WILNER: Yes, Your Honor.

THE COURT: I think somebody needs to stand over there by the volume machine because, you know, some of them are low and some of them are high volume.

MR. WILNER: I understand. Not to belabor it, if we have -- there's one other -- I would like to when the time -- if they get ready to offer any of this, to voir dire the doctor on what was selected as part of -- for this presentation and what was not selected.

In other words, who determined where to stop the tape on a given film and what went after it and so forth, if these things are going to be offered.

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THE COURT: I don't know that you can do

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25 that in voir dire. That sounds more like

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1 cross-examination to me.

2 MR. WILNER: Well, yes, Your Honor, I

3 understand if that's your ruling.

4 THE COURT: Then if you want him to explain

5 other portions of the tape on cross-examination, I

6 don't have a problem with it.

7 MR. WILNER: Your Honor, the -- this

8 letter, which we had not seen prior to this moment,

9 also says, We might call Dr. Weigold if time

10 permits. I don't know that we're going to get to

11 another doctor here.

12 But we're not expecting anybody but this

13 doctor today and Lance Reynolds tomorrow, unless

14 there's a change in that.

15 THE COURT: If we don't get to his

16 testimony, we are not going to finish him today.

17 But I understand.

18 MR. WILNER: True. I'm just -- I don't

19 want through my silence anyone to say, Well, you got

20 it, you didn't say anything about it. So I said it.

21 THE COURT: Okay. I understand,

Ô _ _õ(p 0*0*0*°_°__ ÔŒ 22 Mr. Wilner. You've put me on notice.

23 Are you ready to proceed then, Mr. Riley?

24 MR. RILEY: I am, Your Honor.

25 THE COURT: Mr. Wilner?

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MR. WILNER: I just need one second. I'll be right back. He can start.

THE COURT: You can ask the doctor to come on in please, Mr. Backer.

(Witness enters courtroom)

THE COURT: Mr. Matthews, did I understand Mr. Wilner to say we could go ahead?

MR. MATTHEWS: I think so, Your Honor.

THE COURT: Are you ready, Mr. Riley?

MR. RILEY: I am, Your Honor.

THE COURT: Bring them in, Mr. Backer.

(Jury enters courtroom)

THE COURT: Ladies and gentlemen, again I apologize to you for the delay. I will assure you that any time that happens, the attorneys and I are taking up matters that you are not to be concerned with. But we were working, so please understand that.

MR. RILEY: May I, Your Honor?

THE COURT: Ready to proceed, Mr. Riley?

MR. RILEY: Thank you.

Ô _ _õ(r 0*0*0*°_°__ ÔŒ Q Doctor, I would like to talk to you -- you told us before what popular culture is.

And I would like to discuss and have you explain to the jury what popular culture is and how

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it reflects common knowledge. Can you do that?

A I'll try.

Q Okay.

A The point I was trying to make is that in studying historical awareness we try to find out what we have called common knowledge. And we do this by researching as many different kinds of information as we can.

The goal is to try and recreate your life or mine in the historical period we're talking about. Now, obviously that gets harder and harder the further back in time we go.

But in the time period that we're talking about, we obviously have a variety of sources that are available to us, things that -- if you are as old as I am -- things that you did when you were a kid.

For example, we've got movies, cartoons, slang terms, songs, ways in which people talk to one another familiarly, not formally.

And that kind of expression and the activities that went along with it, bowling leagues, church socials, whatever one does, whatever you do, those are the kinds of social activities that we try to learn about to see how they reflect this body of information we refer to as common knowledge.

Q Are -- is language a part of popular

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culture?

A Absolutely.

Q Including slang terms?

A Slang is an excellent indication of what people understand, because we don't talk in slang to one another unless we feel comfortable and unless we're particularly comfortable that the person whom we're addressing is understanding what we are going to do. Otherwise, it's like using a foreign language.

Q And have there been slang terms that have been used for cigarettes over the years?

A Oh, there have been a number of them. We saw a few of them in the earlier comments, some that go back over a hundred years.

For example, coffin nails is the most common referring to cigarettes. And white slavers is another one referring to cigarettes.

And then generally, the reference -- slang terms referring to cigarettes would be gaspers, wheezers, and then one that is particularly graphic, I think, from the end of the 19th century is the Devil's toothpicks.

Q Did you, did you find references to the

term coffin nails in the -- in the research you conducted?

A Very frequently.

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Q In popular literature?

A Yes, sir.

Q And did you select some of those to share with the jury?

A Yes, I did.

MR. RILEY: Your Honor, may the witness come down and explain this board?

THE COURT: Yes, if he needs to. I think he can probably see it from there.

THE WITNESS: The only thing, if I may stand up, Your Honor.

THE COURT: Yes, if you want to.

THE WITNESS: I just wanted to -- I couldn't see over the podium.

This selection of articles from a variety of journals, the point to be made here -- obviously, this is a very small selection from what could have been hundreds of other examples. And we tried to find them across a very broad period of time in the 21st century.

The first one chronologically is from "Florida Health Notes," which we have used before.

And that's a 1912 statement that there have always been quite a number of very decent people who could not understand why they should be forced to submit to the stench of 47 variety of pipes and/or tobaccos, tuffrens, coffin nails, et cetera, simply because a

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minority of smokers assumed a right to pollute the air in this way.

Q And that's 1912?

A 1912. It's an early example of the anti-smoking movement that's going to come back later on.

And then moving on, in "Time" Magazine in 1938, you get a headline. I don't know if you can see the headline from the jury box, but if you can just put your finger on it, Mr. Riley.

The headline of the article is "Coffin Nails." And right at the top it says cigarettes used to be thought sissy, Schram City, Illinois, where their use is frowned upon still clings to the older belief that every cigarette a man smokes is a nail in his coffin. And then "Reader's Digest" --

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Q Can you see the year on that?

A I can because I'm standing, thank you. August 1944.

"Reader's Digest," by the way, was one of

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the most popular journals in the United States and I'm sure all of you know that it reprinted articles from other sources and made them available in a short condensed form for the widest possible readership.

And it published a tremendous number of articles on smoking and the health hazards of smoking over the years.

Here's one that says, With chronometer

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precision, I hammer another nail into my coffin every ten minutes. This is an article about a fellow who's actually given up smoking.

And he talks at the outset of the article about his habit and about how, as he puts it, he nailed -- put nails into his coffin. And then he decided to give it up and managed to do so.

And the cartoon is from "Life" Magazine in July 1954, and it -- it is a cartoon about the reference to coffin nails.

And you'll see in the bottom right of the picture nails. And the juxtaposition in the cartoon with cigarettes is the implication that when you're done with smoking that cigarette, it becomes a nail in your coffin. So there, in a picture.

Now, the interesting thing to the historian about that cartoon is that people are joking about

something that's very serious. And all of you are familiar with, we sometimes call it gallows humor or graveyard humor. We all make light of things by making jokes of it. It makes it easier to deal with it.

In a public journal, like "Life," read by millions of people, when you find a joke like that is an indication of how much is known on the part of the readership.

You don't make a joke unless you know the

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person hearing or reading it is going to understand what you're talking about. Otherwise, it's not funny.

Q Okay. Thank you, Doctor. I think you also said slavers was another term?

A Yes, the little white slavers, that's right.

Q And did you find -- where did you find references to that?

A They go way back, again. And we have got some -- we found them in a whole variety of popular magazines.

Q Did you pick one to show the jury?

A Yes, sir, I have.

Q And this is from what magazine?

A It's from "Good Housekeeping."

Q Is that the same one that's around today?

A It certainly is.

Q What's the date on this?

A 1916.

Q And the title on the article?

A "The Little White Slaver."

Q And what do they, what do they say about cigarettes?

A They will be slaves to a habit which segregates them from the common crowd of travelers and spectators.

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Q Now, how do terms like coffin nails and slavers, Doctor, show common knowledge?

A Well, when you use slang terms you understand, you take for granted a lot. The linkages implied in the slang is what is the key to common knowledge.

Coffin nail, smoking is a risk of death.

Q Now, are -- are movies part of popular culture?

A Absolutely.

Q And did you find references to health risks of smoking in movies?

A Very frequently.

Q Did you select some to share with the jury today?

A Just a few, yes.

MR. RILEY: May I, Your Honor?

THE COURT: All right.

(Videos played in open court)

Cigarettes sell for 66 cents a carton on the boat here, but at Chung King. I have a boy that pays seven bucks.

Yeah?

So I figure I may load the dock with coffin nails.

Hey, that's an idea.

- - -

Where you been, my pal?

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16 I've been in street bars and I put

17 (unintelligible)...

18 Yeah, you look it.

19 Give me a nail. I'm hungry for a nail.

20 - - -

21 How many times do I have to tell you to
Ô _ _õ(, 0*0*0*°_°__ ÔŒ 22 quit smoking?

23 I guess he's not joking. I shouldn't be

24 smoking. I'm Popeye, the sailor boy.

25 - - -

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1 Will you join me, sir? I say, Will you

2 join me in a drink, sir?

3 Are you an American?

4 Why yes.

5 Then listen. About a week ago, I had a

6 very severe headache till my girlfriend makes me go

7 to this doctor. I told her all right. The first

8 thing he does, he takes my blood pressure. It's too

9 low. Then he plugs me into basal metabolism. It's

10 too high. Then he checks my heart. It's too weak.

11 When he x-rays me, I'm out of focus. On the

12 fluoroscope, the liver disappears. So what do you

13 think he says?

14 What?

15 Give up cigarettes. I'll have a beer.

16 What did he say was the matter with you?

17 He doesn't know. He's baffled. All he

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knows is give up cigarettes.

- - -

I would like a smoke, please. No, no, just one of the ordinary cigarettes that only give you cancer.

- - -

This is the last program you're likely to see. Well, since I'm going to be forced to watch

television, may I smoke?

Yes, give him his cigarettes. It won't be the nicotine that kills you, Mr. Bond.

(Video viewing concluded)

Q Now, please explain the significance to you, in a historical setting, of what those clips suggest.

A This is part of daily life. These are not teaching texts. This is not someone trying to get somebody else to do something. These are people in normal experiences.

You go to that movie to watch Frank Sinatra, "From Here to Eternity," or whatever, and see the story. And those normal people talk the way you and I talk. And the way that they talk reflects the way in which people understood and knew about the issues we're talking about.

Q You mentioned music before.

A Yes. It's part of popular culture.

Q Are their songs that reflect the dangers of

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smoking?

A There certainly are. There's a couple of them of interest, one from The Music Man that refers to coffin nails.

But the most famous of them, I think, is

one called "Smoke, Smoke, Smoke That Cigarette," by Tex Williams, which made it to the top of the charts as the number one best seller, a hit song.

Q When was that?

A In 1947, and stayed there for eight weeks. So it was quite unusual in that regard.

Q What are the words to that Tex Williams song?

A If you'll forgive me, I won't sing it. But I'll quote the verse.

Q Doctor, we will appreciate that.

A Oh, yes, sir. The chorus runs, Smoke, smoke, smoke that cigarette. Puff, puff, puff. And if you smoke yourself to death, tell St. Peter at the pearly gate that you hates to make him wait, but you got to have another cigarette.

Q What term do they use to refer to smokers in that song?

A In the first verse, he refers to smoking as -- cigarettes, excuse me, as nicotine slaves.

Q And again, does this reflect common knowledge that smoking is -- is a hard habit to break

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or can be difficult?

A It's hazardous, dangerous, habit-forming and it's hard to break.

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Q Now, is -- is humor also a form of popular culture?

A Yes, it is. We have seen some. We saw the cartoon in "Life" magazine. We saw in the film clips some humor using the slang terms, what I referred to as dark humor or gallows humor. You see it quite frequently that it reflects the kinds of associations that I've been talking about in the popular mind.

Q Can you give us some examples?

A Well, aside from the slang or are you talking --

Q Of humor and how humor reflects common knowledge. You've given us a couple.

Can you think of some others?

A Well, all jokes, as I've indicated, try to pick up on what people know. If it's not known, it's not funny.

One example that is used over and over again is about quitting cigarettes, quitting smoking, is from Mark Twain, who said that quitting smoking ain't hard. I've done it a hundred times.

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And by making fun of himself in that way, it sort of buys into or calls up what everybody in his audience would understand.

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25 Q And did you find other cartoons in the

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1 course of your research that talked or that showed
2 that people understood it was difficult to stop
3 smoking in '50s and in the '60s?
4 A Yes, sir. And there's one from the
5 "Reader's Digest" that I think is particularly
6 clear.
7 Q Is this the one you were talking about?
8 A That's correct.
9 Q And --
10 A This is in 1964. And the title of the
11 article is "The Dilemma of the Problem Smoker."
12 And the cartoon has a man stretched out on the
13 psychiatrist's couch and he's saying to his
14 psychiatrist, I'm worried. I gave up smoking without
15 any trouble.
16 The humor, obviously, is that everybody
17 reading it knows that it's hard to give up smoking.
18 And here is a guy who gave it up without trouble, and
19 he feels he's different from everybody else. And
20 he's anxious, he's neurotic about it.
21 Q Now, you reviewed "Reader's Digest" over
Ô _ _õ(Œ 0*0*0*°_°__ ÔŒ 22 the course of the years to see what they had
23 published about smoking and health?
24 A Yes, sir, I have.
25 Q And what is the "Reader's Digest"? Could

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you just explain what it was back in the '40s and in the '50s.

A Right. "Reader's Digest" is, first of all, the most popular magazine in American history. It is a magazine that hit circulation of ten million in the 1940s and was far and away the way in which most Americans got their information about what was happening before the television set.

And it's a magazine with ten million, one for each household, you find it -- you couldn't go into a doctor's office or a barber shop in the '40s and '50s without finding a copy of "Reader's Digest" sitting there.

And it's a summary, a digest of articles that appeared in the press that were considered to be of great public interest and significance.

Q And did they publish articles about smoking and health over the years?

A Constantly.

Q Beginning when?

A 1924.

Ô _ _õ(Ž 0*0*0*°_°__ ÔŒ Q And have you picked some examples of those?

A Yes, sir.

(Change of reporter, 10:25 a.m.)

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Q And this is a selection of some from the '30s and the '40s, and there is one from 1954.
A Right. That is a selection of articles -- there were many more. As I said, they began in 1924, but this particular selection focuses on the issue of stopping smoking.
Q Can you make out the titles on these?
A I'm sorry. I can't.
THE COURT: He can come down.
MR. RILEY: Thank you, Your Honor.
A Now, the early one here is on giving up smoking. It's condensed from a British magazine called "Hunch." The next one --
Q And the date?
A I beg your pardon. 1935. That I can see. I can see the jurors.
Q Okay.
A Next, August 1938, "So You're Going to Stop Smoking," by Dr. Henry Link. The next one is here in July 1940, "I Quit Smoking," or "Cooper's Last Stand."

A Obviously an article about a person who succeeded in quitting. December 1941. Now, here is one that got repeated over and over and over again, reprinted in quite literally hundreds of other magazines. And this is by Gene Tunney, the heavyweight champion of the world

who beat Jack Dempsey. And he was a prominent proponent of how to stop smoking. And then April '54, "How to Stop Smoking," from the book of that title by Herbert Green.
Q Thank you, Doctor. Now -- and again, what do these articles about stopping smoking in the '30s and '40s tell us about -- by the way, is this just a selection from that time period?
A Yes, as I indicated, there were many other articles from the "Reader's Digest" and from other journals. "Reader's Digest" is chosen because it's the most accessible, widest circulation magazine in the United States, and that it is deliberately reflective of public awareness and public interest. That's its purpose. That's what it tries to do, and it was obviously very successful. So that's why it's a good barometer or indicator of what people were interested in.
Q Did "Reader's Digest" continue to publish stories about smoking and health in the '50s and the

'60s?
A Yes, sir, they did.
Q Did you pick some of those to share with the jury?
A I did. These are later, although some go

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back into the '50s. But they are selected -- you'll notice "Reader's Digest" is modernizing. The covers are getting a little prettier. Excuse me. The first one is 1952 where the title of that -- may I come down again?

MR. RILEY: Your Honor, may the witness come down?

THE COURT: All right.

THE WITNESS: Sorry.

Q The first one is perhaps the most famous of "Reader's Digest" articles on smoking, and you see it over and over again. "Cancer By The Carton." And this is early for such links, such clear links between smoking and cancer. That's characteristic of the 1950s as people are getting increasingly interested in and focused on cancer in this period.

Next one is 1954, "Facts Behind the Cigarette Controversy." 1957, "Facts Behind Filtered Tip Cigarettes." They were just being introduced in the effort to sell cigarettes. June '62, "Lung Cancer and Cigarettes." Here are the latest findings.

Ô _ _õ(" 0*0*0*°_°__ ÔŒ 21 And then down here in November of 1962,

"Danger, Smoke At Your Own Risk." And it goes on to talk about other illnesses that are related to smoking. And the interesting thing about this one to an historian is that it's condensed from Time magazine. So we are

getting an almost seamless web of information available to the public that's feeding back on itself, people quoting other people who see it, so that it's obvious to what's -- as to what's out there available to people.

And then the summary of it in a later article, April '64, that confirms our sense, or an historian's sense of what the "Reader's Digest" is managing to do from this period. It says, "Since November 1924 the "Reader's Digest" has published 36 articles on smoking and health. The American Cancer Society has termed them a 'profound influence' in creating public awareness of the risks involved in smoking."

Q Thank you, Doctor. Was "Reader's Digest" the only magazine that published stories about smoking and health in the 1950s?

A Not at all.

Q Were there others?

A There were many others. Probably wasn't a significant magazine that did not. But the ones of greatest interest to us, I think, are the news

Ô _ _õ(- 0*0*0*°_°__ ÔŒ 21 magazines.

Q Was the relationship between smoking and health, and smoking and lung cancer in particular, the subject of wide publicity in the 1950s?

A Yes, sir.

Q Why was there a lot of publicity about smoking and cancer in the '50s, Doctor?

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A Well, the first reason, I think, is that for the American people in the 1950s, probably going back to the '40s, cancer was the great dreaded disease. People only knew that it -- in all its forms that it could be deadly. They didn't know what caused it, and the search for a cure -- a cure was called back then the magic bullet, searching for the right way to stop the magic bullet. That's a form of slang again that refers to common knowledge. It refers to the silver bullet in The Lone Ranger, and that's what doctors and others referred to.

There was a tremendous need on the part of the American people for information about cancer, and so when the first studies were published concerning the links between smoking and lung cancer, more precisely linking it to a specific disease and to cancer, the public interest was tremendous.

Q And did other magazines publish stories?

A Yes, they did.

Q "Life," for example?

A "Life," for example. And "Life" magazine is another useful one to us in studying the history of the time because it's -- it's trying to do what "Reader's

Digest" did, some summarizing other pieces but appealing to a mass audience to bring news, daily life to a mass audience. Sort of a combination of "People Magazine" today and a news magazine. And lots of pictures. "Life" magazine made a lot of photos, and they published a lot of things on smoking and health.

Q And you found those in the course of your research?

A Yes, sir.

Q This is one we touched on before. It's a reference to the coffin nails here, but this is the entire article. It's from 1954. Tell us what this article is about, Doctor.

A Well, first you begin with the headline. It's the week's topic. And the idea here is that it's the week's topic for everybody out there. How do I swear off? How do I stop smoking? And the quote taken says, "The fact was and is that to break oneself of the habit of smoking, the convenient, soothing, mildly sedative cigarette, is a highly uncomfortable experience, for while tobacco in the medical sense is not addictive or habit forming, it often has an iron grip on its habitual users."

Q Does this show common knowledge also?

A Yes, sir.

Q And I am sure you can't read this from here, but this is a reference to the Cancer Society's report linking cigarettes to shortened life, and that's one of the famous studies that came out in the 1950s?

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A That's correct.
Q And you also found other stories in "Life" about smoking and health?
A Yes, sir, quite a number of them.
MR. RILEY: May I have a moment, Your Honor?
Q Now are these some other illustrations of "Life" magazine in the 1950s?
A Yes, sir.
Q The first one in 1953, who is the researcher pictured down here?
A It's Dr. Evarts Graham of the Medical School of Washington University in St. Louis, and the article says, "'Smoke Gets In The News.' Doctors report tobacco tar induces mouse cancer. Note rise in cigarette use and human lung cancer. The next one --
Q The next one?
Ô _ _õ(œ 0*0*0*°_°__ ÔŒ 21 A -- is June of 1956, and that's Dr. Auerbach
who -- and the title of that piece is "New Cancer" -- excuse me. "New Cigarette Cancer Link. Study shows as the smoking rate rises, lung damage rises too."
And the next year, April 1957, pictured --

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depicted there, excuse me, is Dr. Ernst Wynder of the Sloan Kettering Cancer Institute, who actually began as Dr. Graham's assistant. He is now doing his own studies, and they are reported in an article which contains the statement, "A Clue in the Studies of Smoking Dangers."
Now, what's interesting to the story of public awareness is that these articles appear frequently in a very popular journal, and they are reporting very scientific stuff. You can't find any other scientific issue reported so widely, so popularly during this period. It's not typical that the -- that you and I want to sort of put our feet up and read a picture magazine on what's -- just to get caught up and focus on these kinds of issues. But this was such a big interest of the American people. It was so important that "Life" published these articles frequently.
Q And does this reinforce common knowledge about smoking and health?
A It certainly does.
Ô _ _õ(ž 0*0*0*°_°__ ÔŒ 21 Q And were there other magazines that also
reported on smoking and health?
A Yes, there were.
Q "U.S. News & World Report"?
A For example. Here are two covers from "U.S.

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News & World Report," one from '54 and the other from '57, and the titles are, in '54, "Does Smoking Shorten Life?" and the '57 article is, "The Truth About Smoking And Cancer." And here I just want to draw your attention to two items -- two features of these pieces

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of information that are of interest to the historian.
First of all, this is the cover of the magazine. This is the hottest topic of the week. This is what the people want to read. This is going to help broaden the audience, and it's important, and there are people out there who know about it and want to know -- have specific information.
And second, we look at the people who are quoted on the front page. These are scientists and authoritative figures from the period. First of all, Dr. Kuyler Hammond of the American Cancer Society, whose views were well known in the scientific community, and here he is being given tremendous public coverage.
And the second is an interview with Dr. John Heller, the director of the National Cancer Institute,
Ô _ _õ(0*0*0*°_°__ ÔŒ 21 and the word "Institute" is covered by the mailing
label. So the leaders of our scientific and public community are being quoted. Their words are being brought to a wide audience in the United States.
Q Now did you look at newspaper coverage of

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smoking and health also?
A Yes, sir.
Q And what -- for the 1950s time period what area did you focus on?
A Well, as I would for any issue of historical awareness, you begin with the broadest coverage and then narrow it down. So in this case we began with national newspapers, "New York Times," "Washington Post," and then we began to focus on newspapers of the locality that would be particularly relevant in this case, and those would be "Baltimore Sun" in the case of Maryland and "The Miami Herald" and "The Fort Lauderdale Sun" and "New Sentinel" and the "Palm Beach Post."
Q Did you find coverage of smoking and health in the Baltimore newspaper?
A Certainly did.
Q How would you describe that coverage?
A I would describe it as frequent and almost comprehensive, I would say. There's reference to every major study of the 1950s.
Ô _ _õ(¢ 0*0*0*°_°__ ÔŒ 21 Q Can you make out the dates, Doctor?
A I'm sorry. I can't.
MR. RILEY: Your Honor, may he come down?
THE COURT: He can come down.
A Beginning in 1952, headline, "Smoking Tied to

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Cancer Rise," referring to a British study that had been published recently, just prior to that. Then we go over here to January 1954, and it announces that the United States government had begun a probe of tobacco use. Seeks answers to the weed's effect on health. And there you got a piece of slang right in your headline, which

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is not typical. It's only used when you know the reader is going to understand exactly what you are talking about. And it's interesting to us here because it's a pejorative. It's a loaded term. When you say "weed," you know what you are referring to.

Here is, "Smoking Cancer Ratio Reported," February '54. June '54, "British Link Cancer of Lung to Smoking." "New data links" -- this is '54 also, excuse me -- "New Data Links Cancer, Heart Ills to Smoking." So we are beginning to get reports available to the broad public of the other diseases involved or linked to smoking cigarettes. "Lung Cancer Cause Probe Studies" -- "Lung Cancer Cause probed." And 1955, "Lung Cancer Talk Given."

Ô _ _õ(¤ 0*0*0*°_°__ ÔŒ 21 Here is an example, as we study historical awareness, these articles in the local newspaper are picking up news and conveying it. This is an article in Cleveland, Washington, D.C. This is from London. Okay? This one is interesting because it's a local doctor,

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it's a local meeting, it's a local audience. This is an example for us as historians of bringing what we know is out there down geographically so we can put it on the ground and say, This is what was going on in Baltimore, Maryland in 1955.

Q Another one?

A Here is '55 again. "Warning Is Given On Lung Cancer; Doctor Sees Correlation Between Disease and Smoking." So, Baltimore doctor, probably Johns Hopkins, major hospital there. And then we have got "Scientists Link Cancer Smoking" in March of '57. Here, July '57 is "U.S. Official Links Cancer to Smoking." And this is a reference to a report by Surgeon General Terry.

Q Burney?

A Excuse me. Burney -- Surgeon General Burney adds his views to other doctors.

Q Did you also -- before you go, Doctor --

A I peg your pardon.

Q Did you also find references to smoking and health in the Florida newspapers?

Ô _ _õ(¦ 0*0*0*°_°__ ÔŒ 21 A Yes, there were.

Q Did you understand that the Maddoxes moved to Florida in the 1960s?

A Yes.

Q And you reviewed the Florida papers for that

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time period?

A That's correct.

Q And is this a selection of the things that you found?

A That's right. And on the left you have got the "Fort Lauderdale News," also the "Sun Sentinel," same company, morning, afternoon paper. And you have got articles covering the 1960s beginning in January

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'64, "Big Drive Open Against Smoking." Moving up to April, "Smoking Spurs Lung Diseases."

Now, again, I just want to call your attention to the nature of this article. This is an opinion article by a doctor. Name is J. G. Molner, and this is published in the local newspaper. South Florida has a very large retirement community, and in the 1960s that community was extremely interested in health issues, particularly questions of Medicaid and Medicare.

So that the Florida newspapers carried a great many articles, including articles of advice, opinion, many letters to the editor on these issues that you

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don't find, for example, in the national press, or as many in the national press. Here is one by J. G. Molner. There is at least one or two of these every week. "Sickness, Addiction, Death Hide in a Cigarette Package." That's a local article of a local doctor who

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is going out to give lectures on smoking and quitting smoking to junior and senior high school students in Fort Lauderdale, 1968.

Here is the Miami Herald, 1967, January. "Cigarettes Blamed For Death Hike." August of the same year, "They Truly Are Coffin Nails." Wasn't just common knowledge. Now the doctors are telling us for sure. May '67, "Smoking Called Disease." October '67, "All Smoking Can Cause Cancer."

Q Thank you, Doctor. And just briefly can you tell us what articles like this had on common knowledge, what effect they had?

A They reinforced common knowledge. They perpetuate common knowledge. I think if you allow me to step a side for a second and just to make the point, refer to the headline on the upper left in the Fort Lauderdale news panel. "Hazard to Health Repeated Again." This is not the first time the people of Florida or any place had heard about the dangers to health in cigarette smoke.

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Q Did you find in the press coverage of smoking and health, did you find comments by the tobacco industry?

A On occasion, yes.

Q Did you find references to comments by the

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Tobacco Industry Research Committee or made on the committee's behalf?

A Yes, sir.

Q And did you take those into account in your historical research?

A Of course.

Q Would you please describe what your opinion is about those articles and the coverage that statements by the industry received?

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A Well, newspapers particularly attempt to present balance on issues. And if there is an individual or group that may have an opinion different from the one being covered in the story, as is the case here, they will make an effort to include that opinion. What's remarkable to me in reading through thousands of articles related to smoking and health during this period is that what we find is that the coverage of industry comments typically comes late.

For example, if that's a front page article, you read the headline. It knocks your eyes out. Two 21 pages later, page 26, column 4, will come the paragraph referring to the oppositional view and that the amount of space and the location of the comments are always secondary. These are the primary information that's being communicated and shared with the public.

Q Now, was smoking and health also covered on television?

A Yes, it was.

Q And tell the jury who were some of the leading journalists at that time period, TV journals?

A The most prominent was Edward R. Murrow who was like our Walter Cronkite or somebody. He was the most famous TV journalist of his day. And he was known for his integrity, for his professionalism. He had become almost a folk hero. Edward R. Murrow was a radio journalist during the second world war, and recorded -- sent out live statements during the blitz, and there are magnificent recordings of Murrow from a basement in London, and you can hear the bombs coming down. Murrow starts a journalism program in American television, and he does -- it's called "See It Now," and he runs a show on the cancer link to smoking.

Q What time of day was that show on?

A Prime time.

Q And what -- what would be an analogous show 21 today?

A "60 Minutes."

Q And did he have a -- devote a special show to smoking and health?

A He had a two-part special and showing the

discussion over the links between smoking and cancer.

Q Could we have a date, please, for that show?

A June 1955.

Q Thank you. And who were some of the people who appeared on that show? Do you recall?

A Well, he interviews significant figures in the scientific and medical community. For example, he gives an interview to or conducts an interview with Kuyler Hammond, the director of statistical studies at the American Cancer Society. And Hammond was in the middle of the first major study of people, live people,

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studying what -- a perspective study, people still alive, linking -- studying the link between smoking and cigarettes and cancer. And he is interviewed and says categorically that smoking cigarettes is linked to cancer. And then the other interview of note on that show is with the director of the National Cancer Institute, Dr. Joseph Heller.

Q John Heller?

A Dr. John Heller. Excuse me. My own name.

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Q Were there people who expressed contrary views also interviewed on that program?

A Yes, there were.

Q And have you reviewed Dr. Heller's interview

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on that program?

A Yes.

MR. RILEY: May I, Your Honor?

(Video played for the jury in open court)

"Dr. John Heller, U.S. Public Health Service and director of the National Cancer Institute. I have been requested by the Surgeon General of the United States Public Health Service to locate our interest and activity in the increasing problem of lung cancer.

"There seems to be without any doubt a reasonableness that the risk of acquiring lung cancer is greater among smokers than in nonsmokers. We do not say that smoking is a cause of cancer. There are other factors such as air pollution that may be quite important in the causation of lung cancer.

"It is possible that heavy smokers (unintelligible) or smoking may be one of these factors. It is possible that hormonal imbalance may be still another factor, and there may be still additional ones about which we know little or nothing. Only time will

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"Some have advanced the idea that cigarette smoking, or heavy cigarette smoking in particular, may be compared to a trigger mechanism in which the individual has a susceptibility to lung cancer, and the

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interaction of these forces may be in such a fashion that cigarette smoking may be the very one that pulls the trigger, and there results what we know as lung cancer.

"After all, here at the National Cancer Institute we have scientists who disagree about many things, and in this problem of the relationship or the possible causation of lung cancer by cigarette smoking our scientists are pretty well divided."

Q I'd like to play part of Dr. Hammond's interview and then ask you to comment on these interviews, Doctor.

(Change of reporters, 11:56 a.m.)

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(Video played in open court)

DR. HAMMOND: It is now established in my opinion beyond a reasonable doubt that cigarette smoking greatly increases the probability of developing lung cancer. In my opinion, people should be warned of the danger, and they are being warned. What they then want to do, whether they wish to smoke or not is their own business.

Q Now, what did Dr. Hammond mean when he said people are being warned?

MR. WILNER: Excuse me, we object.

THE COURT: I'll sustain the objection.

Q Can you tell us from a historical point of view what was being done at the time to warn the public, Doctor.

A Well, the reference by Dr. Hammond was to the widespread frequent mention in the press and the other media of the health risks of smoking. It was his view that the public at that time had an awareness of the links between smoking and cancer, and that when he said they are being warned, he was referring to a whole variety of information, common knowledge about it.

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The headlines to which I referred earlier, as I said on more than one occasion, we show you

five or six, we could show you hundreds just like it that they were receiving the message. They were receiving a warning about the links between smoking.

MR. RILEY: Your Honor, this might be a good time for a lunch break.

THE COURT: Approach the side bar a minute. We don't need the reporter.

(Side bar, Court and counsel).

THE COURT: It's obviously 12:00 at the point, and we're going to break for lunch. Please do not discuss the case among yourselves or anyone else and we'll start at 1:15. So you'll have an hour an 15 minutes.

MR. BACKER; All right, court is in recess until 1:15.

(Jury exits, and Court was in recess at 12:00 noon)

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IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 97-03522-CA

DIVISION: CV-H

ANGELA B. WIDDICK, as Personal Representative of the Estate of ROLAND E. MADDOX, deceased,

Plaintiff,

vs.

BROWN & WILLIAMSON TOBACCO CORPORATION, a foreign corporation; LIGGETT GROUP, INC., a foreign corporation; and WINN-DIXIE STORES, INC., a Florida corporation,

Defendants.

AFTERNOON SESSION

Monday, June 1, 1998

VOLUME XVI

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P R O C E E D I N G S

Monday, June 1, 1998 1:15 p.m.

PROCEEDINGS

MR. BACKER: All rise, please. Court is back in session. Please be seated.

THE COURT: Are you ready to proceed, Mr. Riley?

MR. RILEY: We are, Your Honor.

THE COURT: We need the plaintiff's attorney.

(Mr. Wilner present)

THE COURT: Are you ready to proceed, Mr. Wilner?

MR. WILNER: We are ready, Your Honor.

THE COURT: Bring them in.

(Jury enters courtroom)

THE COURT: Good afternoon, ladies and gentlemen.

THE JURY: Good afternoon.

THE COURT: You may continue whenever you're ready, Mr. Riley.

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DIRECT EXAMINATION (Continued)

BY MR. RILEY:

Q Good afternoon, Dr. Tulchin.

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A Good afternoon, Mr. Riley.

Q Before we broke for lunch we looked at some television clips from the 1950s. I'd like to ask you about one other one. Of course, in the '50s Eisenhower was the president?

A Yes, sir.

Q And was he a smoker?

A He was. He was a very heavy smoker.

Q And did he have any health problems while he held office?

A He had a heart attack while he was president of the United States.

Q And what year was that?

A 1955 was his first attack.

Q Was that the subject of attention in the national press?

A It certainly was.

Q And was he asked about that at a press conference?

A Yes, sir.

Q I'd like to play a clip of that press conference and then ask you to comment on it. And I'd like you to pay attention to the question that was asked.

(Video played in open court)

VOICE: As President of the United States, it's hard to give up cigarette smoking for one

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reason or the other these days. And, finally, it's a difficult thing to do. Can you -- successfully. Do you have have any helpful advice that you'd like to offer?

PRESIDENT EISENHOWER: Well, I'm a little like the fellow who says, I don't know if I'll ever start smoking again, but I'll never stop again.

Actually, of course, I was a very heavy smoker all through my life in the military and the war. And all that I was asked to do was to be more moderate about it. No doctor ever told me I should stop. But for me it was easier to stop. And I will only say that I really believe if a person turns their mind to something else and quit pitying themselves about it they won't find it nearly as hard to quit as they think it is.

Q Now, tell us from your perspective as a historian, in a historian's opinion, why this is important that President Eisenhower was asked about stopping smoking at a press conference.

A Well, to begin, to have the President of the United States, and Eisenhower was perhaps the most respected president in the last 50 years. To

have a figure say that on national television, I think, is extremely significant reflecting public awareness of the issues.

And that question to which you draw our attention at the outset comes from a member of the

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press who asks about the president's efforts to give up smoking. And she says that many of us have been trying to give up smoking in a variety of ways for a variety of reasons.

This is clearly on the -- is a subject of great interest to a large number of people. And his response goes back to what I was trying to explain about common knowledge earlier, that he begins with a joke. It's similar to the Mark Twain story, and it's folksy. He was, that was one of his great geniuses as a politician, perhaps. But he knows that that shorthand is going to get an echo in the minds of people who are listening to it.

Q Words people understand as a joke?

A Immediately.

Q Why do they understand his joke?

A Because it was a subject of which they were extremely well-informed.

Q Now, just to kind of sum up this area, what effect, Dr. Tulchin, does television coverage

of smoking and health have on common knowledge in the 1950s?

A It reinforces the common knowledge, brings to the public an awareness of the latest scientific information, authoritative comments about the risks -- the links, excuse me, between smoking cigarettes and health risks, and confirms for us what we read

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and what we understand was in the public mind during that period.

Q And, now, did you find references in your research to hearings that Congress held in the 1950s to smoking and health?

A Yes, sir. As part of the concern for the growing incidence of lung cancer and cancer generally, the Congress of the United States through its hearings, public hearings, raised the question generally of what the government might or should do concerning the health hazards of smoking.

Q And who were some of the people who testified at those hearings? When were they held, the hearings?

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A Hearings, in 1957.

Q And who were some of the people who testified?

A Well, people we've already heard from.

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They were the leaders of the United States public health community. For example, Surgeon General of the United States appeared. Dr. John Heller of the National Cancer Institute appeared and, of course, Cuyler Hammond representing the American Cancer Society.

Q And did Dr. Burney and Dr. Heller discuss the coverage of smoking and health in television and in the -- I'm sorry, in the media, in the newspapers

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and magazines and on TV?

A Yes, they did.

Q And did they discuss that with Congress?

A They discussed that with the Congress during those hearings.

Q And what did they tell Congress about press coverage at that time?

A Well, the Surgeon General and Dr. Heller told Congress that in their opinion the press coverage had been excellent and that there had been exceedingly comprehensive coverage in the press. There are the quotes from each of those people,

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Surgeon General and the head of the National Cancer Institute. The first article says, Our position is that we have informed the public through the excellent coverage of the press, radio and TV.

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And Heller echoes that by saying that newspapers, radio, TV and other media have done an excellent job covering this problem, and a very objective job. This is an exceedingly valuable way of informing the public.

Q And were they asked in the course of these hearings whether warnings should be placed on cigarette packages?

A Yes, they were.

Q And what did they say about that?

A It was their opinion that warnings were

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not necessary, that the public was adequately warned.

Q And you found -- was there an article reporting that in the New York Times?

A Yes, sir, it was widely quoted.

Q And is this a blowup of the New York Times' article reporting on --

A That's correct.

Q -- Heller and Burney's comments about whether warnings -- they were asked whether they would recommend them?

A That's correct. They declined to recommend printing of warning labels on cigarettes.

Q Now, I'd like to ask you what historical

significance you attach to the statements by Heller and Burney to Congress that the press coverage had been excellent.

A Well, it's confirmation of what I call common knowledge, that these are authoritative figures. These are people whose job and responsibility it is to make sure that the American people are informed about the health hazards, not just of smoking, but of other things with the public health service. And in their considered professional authoritative opinion, the American public was well-informed about those risks.

Q Now, the first Surgeon General's report on smoking and health was issued in 1964?

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15 A That's correct.

16 Q And was that considered a significant

17 document in public health?

18 A It's a major watershed in public documents

19 concerning this issue.

20 Q How long was that report in preparation?

21 How long did it take them to put it together?

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23 Q And I'd like you to describe for the jury

24 the process by which that report was released to the

25 public.

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1 A Well, the government took the unusual step

2 of calling a press conference in one of the largest

3 rooms available in Washington, D.C., which is the

4 lecture hall of the state department building. And

5 they insisted that anyone attending the press

6 conference come on time and not leave.

7 Members of the media were given a copy of

8 the report before, and great efforts had been

9 exerted earlier to avoid leaking the report in order

10 to maximize the impact of this first presentation at

11 that press conference.

12 And the press was brought in and locked

13 into the room so that nobody could seize on a phrase

14 or an opening, run out to the phone and call in

15 their story. And everyone was made to sit through

16 the entire presentation.

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And another thing that's not trivial, I think, for us is that they chose to make the presentation on Saturday, so that they would get news coverage in the Sunday papers, which as you know are read by approximately twice as many people as read daily newspapers. So this is the way that they sought to maximize the impact of their report.

Q What kind of coverage did the report get in the newspapers?

A Extraordinary coverage. It appeared in newspapers all across the country, small towns, national coverage, of course. It was almost saturation coverage, I would say.

Q And did you find coverage of that in the Florida newspapers that you looked at?

A Of course.

Q Are these some of the examples of the press coverage that you found?

A It's a sampling of headlines from newspapers in the context that we're talking about beginning with the "Baltimore Sun" on the upper left-hand corner, Cigarette Smoking Branded a Major Health Hazard.

And then various Florida newspapers, the "Jacksonville Journal" on the upper right, lower left you have "The Florida Times-Union," and in the right lower corner in the "Miami Herald" you get a

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banner headline referring to the editor that happens to be the science writer of the "Miami Herald," who wrote that feature story. And he starts the story by saying "I Quit Smoking at 2 p.m. Saturday."

Q When was the report released?

A That's when he was released from the lecture room of the state department.

Q And this is by John Connors. I'm sure you can't see that.

A Yes.

Q Was his story written up elsewhere, John Connors?

A Yes, it was. It received -- itself received national coverage that the health reporter for the -- science and medical reporter, rather, for the "Miami Herald" would choose to headline his story and feature his report of the report with his efforts to quit smoking. And that, in fact, was picked up in the press, in the media.

Q And was the Surgeon General's report the subject of banner headlines all across the country?

A Yes, it was. And, again to a historian when you're searching the context of information, if you look at the headline in the Baltimore Sun, you can see that the cigarettes smoking headline is on top of a headline on U.S. troops in action in Panama. It's a major story. It is the story that

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captures the interest of the widest public in the United States.

Q And was this also the subject of stories in the national press?

A Yes, sir.

Q And did you find examples of that in the course of your research?

A Yes, I did.

Q Are these some of the examples that you found?

A Yes, the three major news magazines, Time, Life, U.S. News and World Report focusing on the Surgeon General in the lower right, same picture, slightly smaller in Time magazine, the headline in Life, Verdict on Cigarettes: Guilty as Charged.

And then in the Reader's Digest, April '64, Cigarettes -- Tried and Found Guilty. And that's just a sample of articles in the public press at that time.

Q And what effect, again, did coverage like this and the coverage in the local newspapers have on common knowledge, Doctor?

A For the historian, finding articles like that reinforces our sense of what was known, what was available, what the common knowledge on the subject was at that time.

Q Did people in Florida hear about the Surgeon General's reports?

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24 A Yes, they did.

25 Q And, in fact, I think you showed a board

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1 earlier this morning that showed that.

2 A The Florida department of public health

3 says in its health notes in the following year that

4 nearly every Floridian has heard about the Surgeon

5 General's report.

6 Q And did you find out -- did you learn

7 whether the Surgeon General's reports was

8 incorporated into the textbooks that are used by --

9 used to teach school children here in Florida?

10 A It was incorporated with great speed. The

11 very next year, 1965, the junior high school text on

12 health in the State of Florida uses the Surgeon

13 General's report. And it cites it, uses it as the

14 source material for the education material for

15 school children.

16 Q Now, were there -- I mean, this was --

17 were there follow-up stories in the press about

18 smoking and lung cancer following the Surgeon

19 General's report?

20 A Absolutely.

21 Q Did that --

Ô _ _õ(Ö 0*0*0*°_°__ ÔŒ 22 A The interest remains at a very high level.

23 Q And did you find follow-up stories like

24 that in the course of your research?

25 A I did.

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Q And is this an example of those follow-up stories?

A This is an example from a Florida newspaper. And it refers to previous generations concerned with the link between smoking and lung cancer and refers -- it joins the contemporary with the historical confirming for us what has been passed on from generation to generation.

Referring to the recent report it goes on to say, When Ulysses S. Grant, union general and 18th president of the United States, was lying on his death bed at Mount McGregor, New York, in April 1985, an article appeared on the front page of the Columbia, South Carolina, "Daily Register."

The story read: The deadly illness of General Grant is ascribed to cancer, and it is said that the cancerous growth was caused by excessive smoking.

And that was published in April of 1985.

Q Is this an example of why it's important to do historical research to determine common knowledge?

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A Yes, sir.

Q Now, based on the research you've done and your review of the evidence, were the health hazards

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of smoking well-publicized throughout the 1950s and 1960s?

A In my opinion, it was.

Q What effect did all this publicity have on common knowledge, Dr. Tulchin?

A It was merely confirming common knowledge and convincing people of what they already knew, reminding them of what they already knew, repeating what they already knew.

Q And was it well-known to consumers in the 1950s and 1960s that smoking was associated with lung cancer?

A I believe it was. In my opinion, it was.

Q I'd like to show you one last board, Doctor, and ask you to comment. Who is Dr. Daniel Horn?

A Dr. Daniel Horn was Cuyler Hammond's associate at the American Cancer Society during the 1950s when the first major studies were done on people concerning the links between smoking and lung cancer. And he in his career was promoted to be director of the National Clearing House for Smoking and Health. And he was indefatigable. He was tireless in his efforts to make people understand the link to get them to stop smoking.

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And his conclusion in 1969 is, I think, significant to us. It says, You could stand on a rooftop and shout smoking is dangerous at the top of your lungs, and you would not be telling anyone anything they did not already know.

Q Is that consistent with your historical research, Doctor?

A It is. I might comment that there's an article by Ann Landers of roughly the same time that says almost exactly the same thing. And Ann Landers was probably as well-known or better known than Dr. Daniel Horn.

Q And what did Ann Landers have to say about it?

A Anyone who knows how to read is aware of the dangers of smoking.

MR. RILEY: Thank you, Doctor. I have no further questions.

THE COURT: All right. Mr. Wilner.

MR. WILNER: Yes, Your Honor. Could I have about five minutes to get this set up?

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THE COURT: Yes. If you'll step back in the jury room, please, for just a few minutes. We'll call you right back out.

(Jury exits courtroom, discussion off record and recess)

THE COURT: All right, Mr. Wilner, are you

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ready?

MR. WILNER: Okay. I'm ready.

THE COURT: All right. Are you ready, Mr. Riley?

MR. RILEY: Yes.

THE COURT: Okay, bring them in.

(Jury enters courtroom)

THE COURT: All right, Mr. Wilner.

MR. WILNER: May it press the Court.

THE COURT: Please yes, sir.

CROSS-EXAMINATION

BY MR. WILNER:

Q Is it Dr. Tulchin?

A Yes, that's fine, thank you.

Q And you're a Ph.D. in history?

A Yes, sir.

Q Not a medical doctor, of course, or anything like that?

A That's correct.

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Q You have charged Brown & Williamson Tobacco Company almost $30,000 for this work you've done?

A I've submitted invoices for my work on

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this case, yes, sir.

Q And almost $30,000?

A I believe that's the case.

Q Let me see if this is one of your

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invoices. From March 21 to April 19, 1998, you charged $20,000 and worked 79 hours.

A Yes, sir.

Q And then a little earlier in the year you had a charge of another $9,000, shows from February 20 to March 20; is it?

A Yes, sir.

Q So basically two months, $30,000; is that what it adds up to?

A Under 30,000, yes, sir.

Q Under 30,000? 20,962 and 9,798?

A 30,000.

Q Okay. Now, you said some of this though was not done directly by you; some of this work was done by your assistants?

A That was the work that I performed.

Q How about your assistants, what did they do?

A They did work on -- of research.

Q Okay.

A At my direction.

Q At your direction and supervision, of course?

A Yes, sir.

Q So you would ask certain assistants to go through the, let's say the newspapers and catalog important information?

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A The research assistants would xerox articles that referred to the subjects in question, smoking, health.

Q Did they -- did the research assistants also look through and sort of summarize the articles for you?

A The research assistants first would bring all of the articles to me. And then I would make a selection of them worth summarizing.

Q So they would bring all of them to you, and then you would say, okay, I want you to summarize these, these and these. And they'd go out and summarize them?

A Yes, sir.

Q And, of course, were -- did they understand what this was all about?

A Yes, sir.

Q Why you were doing it?

A Yes, sir.

Q Did they also understand who was paying you to do it?

A Yes, sir.

Q And you, of course, oversaw the work of the associates or assistants, correct?

A I did.

Q And when they would summarize something, would you look at it? Look at their summary?

A I would.

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Q And your opinions are based in part on the work that you reviewed, right?

A In part.

Q Okay. And did they actually go and read from the, let's say, the archives of the "Miami Herald"?

A Yes, sir.

Q Down in Miami? They flew down to Miami to do it?

A Library of Congress in Washington has a complete collection of the "Miami Herald."

Q On microfilm?

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A I believe most of it is on microfilm. And there are a few volumes in paper.

Q So how did they bring them to you when they were on microfilm? Did they make photocopies?

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A Yes.

Q So you got all these photocopies from all these different years and then you picked the articles that you wanted them to summarize, and they went back and summarized them, fair enough?

A Yes, sir.

Q Okay. And then you collected the summaries, right?

A Yes, sir.

Q And, in fact, there is a summary here of articles found in, among other things, in the "Miami

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Herald" for each year that this process was done, right?

A Yes, sir.

Q And, for instance -- let me make sure I got the right thing here. This is a summary of articles for 1950, right?

A That's correct.

Q And isn't this the one piece of the summaries that we just talked about that were done by your associates on these newspapers?

A I'm sorry, that cover page for the summaries for 1950, is that your question? I'm sorry, I misunderstood.

Q This came from you?

A Yes, sir.

Q And the notes in here, they came from you, too?

A That's correct.

Q Okay. Just wanted to make sure. Just a minute. I'll get to those in a second.

And you also did some other newspapers, too, right? Like the "Baltimore Sun"?

A Yes, sir.

Q And looked at some magazines?

A Yes.

Q That kind of thing? Now, in the newspapers are also advertisements, right?

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14 A Yes, sir.

15 Q Where are those in your summary?

16 A They're not in the summary.

17 Q Did you look at them at all?

18 A I did.

19 Q Count them?

20 A Not systematically, no.

21 Q Make a little note about, you know, like
Ô _ _õ(è 0*0*0*°_°__ ÔŒ 22 this magazine has right beside the doctor saying,

23 we've just found something about cancer. Right

24 beside it is a thing that says students smoke Lucky

25 Strikes. Did you make any notes of those?

1 A I believe you'll find in those notes a few

2 comments of that nature, yes.

3 Q So what kind of comments of that nature?

4 A Almost just exactly as you described.

5 Q You mean the fact that there is an ad for

6 the product in the same volume as a scientific

7 story?

8 A As a news story.

9 Q Yes.

10 A If that was the case, there are some notes

11 through there that I recall.

12 Q But certainly you didn't try to -- or you

13 didn't indicate whenever that happened, because

14 almost every edition of many magazines contained at

15 least one ad for cigarettes; didn't it?

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16 A I can't say that. I don't know that.

17 Q You don't know one way or the other?

18 A I don't know whether every newspaper

19 contained an ad of cigarettes. There were many of

20 them.

21 Q Okay. But you didn't try to count them?

Ô _ _õ(ê 0*0*0*°_°__ ÔŒ 22 A I did not.

23 Q Didn't copy them?

24 A I did not.

25 Q Not an expert in advertising?

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1 A I think that's certainly fair.

2 Q That's true?

3 A Yes, sir.

4 Q Your expertise is in Latin American

5 studies?

6 A In history.

7 Q Your specialty has been Latin American

8 history?

9 A Yes, sir.

10 Q And U.S. foreign policy?

11 A That's correct.

12 Q The first time you got involved in

13 anything to do with cigarettes was when?

14 A About two and a half years ago.

15 Q How did you do that?

16 A I was asked to perform historical research

17 on the question of historical awareness.

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18 Q By whom?

19 A A gentleman representing a law firm named

20 Shook Hardy & Bacon.

21 Q Who did they represent?

Ô _ _õ(ì 0*0*0*°_°__ ÔŒ 22 A Frankly, I did not ask at the time.

23 Q You mean it could have been like the

24 Russian government; you don't know who it was?

25 A I said they represented tobacco firms, but

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1 I didn't inquire as to which one.

2 Q Tobacco firms. And did they set up -- did

3 they ask you then to do some kind of a project for

4 them?

5 A Yes, sir. He asked me to do historical

6 research on the public awareness of the links

7 between health and smoking.

8 Q And you agreed to do it?

9 A I did.

10 Q And you agreed to charge?

11 A I did.

12 Q So the two months of $30,000, that doesn't

13 include the two and a half years of work that you've

14 done for unspecified tobacco companies for Shook

15 Hardy, right?

16 A It's a part of.

17 Q Right. I say that does not include the

18 rest of the two and a half years, right?

19 A That's correct.

http://legacy.library.ucsf.edu/tid/dnf07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/nmjl0001

20 Q So how much is the rest of this

21 unspecified research for -- or research for
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law firm,

23 Shook Hardy? How much is that?

24 A It averages $30,000 a year.

25 Q So you'd be $30,000 the first year, right?

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1 A Yes, sir.

2 Q And then $30,000 the second year?

3 A Yes, sir.

4 Q But what about this extra $30,000 for this

5 case? Is that part of the 30- or is that in

6 addition?

7 A No, that would be in addition.

8 Q So you got actually $30,000 the first year

9 and 60,000 the second year, right? Thirty plus the

10 30 for this case.

11 A It's been two and a half years, I

12 believe.

13 Q I haven't gotten to the extra half yet.

14 A We're in the extra half.

15 Q So we got 30,000, 30,000, and what? And

16 then 15,000 for the normal half of the year, and

17 then another 30,000 to boot, right? Is that fair?

18 I'm trying to do it the best I can.

19 A Beginning in March with the first of those

20 invoices that you put on the screen, I began to work

21 on this case and the number of hours increased.
Ô _ _õ(ð 0*0*0*°_°__ ÔŒ 22 Q Well, I understand that, but
I'm just

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trying to get an idea. How much do you think you've billed the cigarette industry in the past two and a half years?

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A Oh, I guess I'd have to say approximately $90,000.

Q 90,000?

A Approximately.

Q Okay. And it's basically for doing stuff like this, right, pulling out clippings and things?

A It's performing historical research on the question of public awareness connecting health hazards and smoking cigarettes.

Q Who were your research assistants for this job?

A There were a number of them. They tended to be students available in the Washington, D.C. area.

Q And you interviewed them, of course?

A Yes, sir.

Q You tried to do a full canvass, or rather you tried to represent what you called the full canvass of what people were aware of?

A That was the effort. That was the objective.

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Q And you say that people in the past do not -- did not necessarily know what we do today, true?

A Yes, sir.

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25 Q Okay. So then you said common knowledge

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1 is what you expect other people to know, right?
2 A Yes, sir.
3 Q And you gave as an example, don't drink
4 and drive, right?
5 A That's correct.
6 Q Now, has there been, to your knowledge,
7 any serious debate about drinking and driving?
8 A Not that I'm aware of.
9 Q Has anyone come out and said it's a good
10 idea, I think you should?
11 A Drink and drive?
12 Q Yes.
13 A Not that I'm aware of.
14 Q Have the manufacturers of liquor or of
15 cars come out and said, it's really not true.
16 Drinking and driving is really not a problem. Have
17 you ever heard that?
18 A Not that I'm aware of.
19 Q Have either manufacturers of liquor or of
20 cars said, ahh, this drinking and driving, it's mere
21 statistics. And you can prove anything with
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22 statistics. Have you ever heard that?
23 A Not that I'm aware of.
24 Q Have you ever heard anybody about drinking
25 and driving say, well, there are lots of risks in

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life, you know. This is just one of them. Go do it. Have you ever heard that?

A I'm afraid to say I've heard individuals say that to me.

Q Yes?

A Yes, sir.

Q Have you ever heard the manufacturers of liquor or of cars say that?

A Not that I'm aware of.

Q If would you approve if they did?

A I'm not sure that I would, no. Why? Why would I do that?

Q You also said about common knowledge, don't walk under a tree, right, in a lightning storm?

A Yes.

Q Has anybody to your knowledge ever had a commercial interest in having people walk under a tree in a lightning storm?

A Not to my knowledge.

Q Now, common knowledge, you say, is what you expect others to know. So I guess that -- is it true that common knowledge is something that we don't expect -- well, strike that I'll ask you later.

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All right. Let's talk about just for a minute "Life" magazine. Did you -- were you asked about whether "Life" magazine covered various events of the time?

A Not specifically, no.

Q Did you review "Life" magazine?

A I did.

Q Didn't you say that "Life" magazine -- where is our 1964 "Life"?

You said something about "Life" magazine chronicling the times or something. I don't know, did you? Being a good chronicler of the times?

Is it? Regardless of what you said, is it. Was it?

A It was a picture magazine that sought to make the news of the day readable for the American public.

Q And you've seen the 196- -- January 24, 1964 edition of "Life"?

A Yes, sir.

Q Have you actually seen the whole magazine?

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A I have, sir.

Q Do you have it?

A I do not.

Q You saw it in the news someplace? I mean

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you saw it in the library or something?

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A In the Library of Congress, yes, sir.

(Change of reporter, 2:00 p.m.)

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Q Okay, and this is the one that has Luther Terry, the Surgeon General of 1964, announcing -- let me put it on. Luther Terry saying, Verdict on cigarettes, guilty as charged. And that's 1964,

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right?

A Yes, sir.

Q You saw that?

A I did, sir.

Q All right. And then did you see -- did you turn the page? Did you see the Surgeon General's committee of scientists who considered the Surgeon General's report in '63 and '64?

A I did.

Q And did you see underneath it the picture of the people from inside the industry smoking away?

A I did.

Q And did you see on the next page -- who is this guy with his mouth open?

A I'm sorry. I can't read it from here.

Q But you have studied him. Don't you know who he is and -- important in history?

A I have read that article, but I have also read more than 10,000 other articles, and I'm sorry I can't remember that particular page.

Q That's Joe Burkeson. Remember him?

A No, I can't say that I do.

Q From the Mayo Clinic. Didn't he say that it's all statistics, not really very doubtful, one expert's convincing story leaves another very doubtful. This guy is doubtful. Do you see that?

A Yes, sir.

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Q Why is he doubtful?

A He considered some of the science being discussed scientifically unconvincing to him.

Q Did you read his discussion of why he thought it unconvincing?

A I did read that article, yes, sir.

Q Do you know Burkeson was paid by the cigarette industry then?

A I did not know that.

Q Did you know that when the scientists came to the United States in 1958 from England that the cigarette industry said that they considered Burkeson's ideas unsound behind closed doors?

A I didn't know what they said behind closed doors, no. I'm sorry.

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Q But Burkeson was continued to be propounded as a doubt, that he wasn't sure, correct?

A In that story that is the case, yes.

Q Well, is this the only place you have ever seen Burkeson?

A That is the only story of which I'm aware right now.

Q So have you -- are you saying you've cataloged the literature, and you haven't seen Joe Burkeson except in that one time in Life magazine?

A I'm saying that I surveyed the historical record and that I selected articles I considered

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appropriate to the context of the information.
There were, as I have indicated, tens of thousands
of references, and some of them I considered to be
typical, and some I considered to be atypical on the
basis of reading the historical record.
Q On the next page it shows a Huge Industry
is Now Looking for Remedies. Do you see that?
Looking for Remedies, and they have got a picture of
this huge industry with all these cigarettes and
these scientists running around. Do you see that?
A I do.
Q Was it people's perception in the 1960s
then that the industry was trying to solve any
problem that might be occurring and that things
basically might work out?
A Certainly from reading that article that
would be information there.

Q Have you looked into scientific data from
inside the industry to see whether they were really
looking for remedies or whether that was all
baloney?
A No, sir, I have not.
Q Would that make a difference to you?
A No, sir.
Q None at all?
A It would be perhaps an interesting piece
of information, but it would not alter the notion of

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public awareness, which is what I am interested in, and it would not alter my ability to understand common knowledge about the problem we're discussing.

Q Well, does common knowledge include belief that the industry is looking for remedies?

A It could well.

Q And what would be the effect on a consumer who was told that, look, the industry has got this problem solved; they have put their top scientists on it?

A I really can't speculate what the effect would be, but consumers generally were aware of the health hazards of smoking.

Q And were they aware that -- whether the industry thought there were some types of cigarettes

that would give you cancer and others that wouldn't?

A I'm sorry, I don't understand the question. Would you repeat that.

Q Well, I mean, did the consumers think that if they smoke one kind of cigarette it might be all right, but if they smoked another kind it might not be all right?

A I wouldn't say so, no.

Q All right. Did they think that if they held it down it might be all right, and if they smoked too much it might be bad?

A The awareness in the public or amongst

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consumers, if you will, was that smoking was risky, smoking was hazardous, and the more you smoked, the riskier it was and the more dangerous to your health.

Q Risky compared to what?

A Compared to not smoking.

Q But how about -- I mean, everybody takes risks in life. I mean, don't we take risks when we cross the street?

A In some sense we do, but we normally don't consider it a life-threatening and significant risk. We try to look both ways, for example.

Q We don't -- why do we look both ways if we

don't consider it a life-threatening and significant risk?

A To reduce the risk.

Q To reduce the risk. So if you say or you suggested at the end -- let me see if I can get it straight. The last thing you said, you said, Everyone knows smoking is dangerous. That is sort of your testimony in a nutshell, right?

A I believe that is the last thing I said, yes, sir.

Q And so my question is then, let's go back to the 60s, just for interest, how dangerous?

A Significantly dangerous.

Q Well, let's see if we can compare it with

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some other things that people do in life in general.

Let me look at my risk chart here. I must have lost it. 12.1.

Let me show you this chart from the 1989 Surgeon General's report. Incidentally, have you read the Surgeon General reports?

A Yes, sir.

Q All of them?

A No, sir, I'm sorry. I didn't hear the plural.

Q Oh, I'm sorry. You read what, which

report?

A I read through the 1964 report.

Q Where did you get it?

A From the library.

Q And what was the next report?

A I believe there were reports -- I haven't read them all. I didn't mean to indicate that I had.

Q Well, but, as an historian, when was the next report?

A There was a report the next year.

Q There was?

A There was a Surgeon General's report to the president every year.

Q So you think there is a '65 Surgeon General's report?

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17 A There is a report to the president every
18 year.
19 Q So your answer is yes, you think there is
20 a '65 Surgeon General report?
21 A Yes, sir.
Ô _ _õ(_ 0*0*0*°_°__ ÔŒ 22 Q All right. You'd stake your reputation on
23 it?
24 A I'd be very --
25 MR. RILEY: Objection, Your Honor.

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1 MR. WILNER: Oh, never mind.
2 THE COURT: I'll sustain it.
3 Q Okay. So what was the subject of the '65
4 Surgeon General's report?
5 A I haven't read it.
6 Q Well, what was the subject?
7 A The subject of the Surgeon General's
8 report would be an annual review of his department's
9 activities for the president of the United States.
10 I do not know the subject of it. I haven't read it,
11 but he submits a report to the president every year.
12 Q Was it about smoking?
13 A I don't know that.
14 Q Well, wait. I'm talking about smoking
15 now. You're here talking about smoking in general,
16 right?
17 A Sir, you asked me --
18 Q All right. Okay. I don't want to argue

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with you. I'll withdraw that.

Tell me when the Surgeon General wrote about cigarettes and disease next.

A I can't tell you exactly when he next did it.

Q Exactly -- tell me, give me an idea.

A Well, there were periodic reports which

make it into the press.

Q Well, I'm trying to pin you down a little bit here. What do you mean "periodic"?

A Well, I'm terribly sorry. I don't mean to be difficult, but sitting here I can't remember every one of the reports that refer to smoking.

Q I didn't say every one. Tell me the next one.

A I can't do that. I'm sorry.

Q Well, give me a ballpark. What was the next one after that if you can't remember the next one?

MR. RILEY: Judge, it's been asked and answered.

THE COURT: I'll sustain the objection.

Q Tell me any Surgeon General reports that you know about after 1964.

A There was one in 1989.

Q Well, that's a long time in the future. Are there any in between?

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21 A I believe there were, but as I said, I'm
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at

23 this moment.

24 Q Was there ever one in 1980?

25 A Are you referring to the Surgeon General's

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1 report to the president, or are you referring again

2 to cigarettes?

3 Q Cigarettes.

4 A I don't know the answer to that.

5 Q Well, is it fair to say -- now, did you

6 testify that the Surgeon General's reports were

7 widely publicized?

8 A No, sir. I said that 1964 report was

9 widely publicized.

10 Q And when was the next one that was widely

11 publicized?

12 A Sorry. I can't remember the exact date.

13 Q Well, you went through all of this work to

14 try and figure out what was publicized?

15 A No, sir --

16 Q Now, I'm not asking you for the exact

17 date. I'm asking you for anything you can tell me.

18 When was the next one that was publicized?

19 A I went through the historical record to

20 see what information was being disseminated about

21 smoking across the period from the '40s, '50s, and
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of a variety

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of publications, some of which I have commented on, and the most significant public document, in my opinion, was the Surgeon General's report of 1964.

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Q What did the '64 document say about whether smoking is a mental habit or a physical addiction?

A I don't recall the exact language.

Q Well, I must have not asked you clearly. I didn't really ask you for just an exact language. I just want the flavor of it, you know. If it was so widely publicized, what did he say?

A If it's widely publicized, I would focus on the information concerning the report which is in the public press.

Q Well, tell me then.

A The public press' accounts of the Surgeon General's report concentrated on the links between smoking and disease, specifically lung cancer and secondary heart disease.

Q You told us earlier you had read the '64 report?

A Yes, sir.

Q You have, cover to cover?

A I have looked through it. I have read most of it, not all of it, and I have just as I have looked through a great deal of other material.

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Q Well, you -- now, you haven't really read

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it if you've looked through it. That's better,

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right?

A Mr. Wilner, I'm sorry, I don't know how to answer that question. My students read things assigned to them, and I don't ask them if they read it from cover to cover. If you are asking me if I read it from cover to cover and every page, I'd have to say I have not.

Q You have not, okay. So I am back to this: What was the conclusion of the Surgeon General in 1964 about whether cigarettes were physically addictive or mentally habituating: A, do you know it; B, was it public?

A The public discussion of it focused on habit, rather than addiction, but I can't recall the exact language in the report to which you refer.

Q Okay. And I would like to -- I wonder if you could help me find the section that was displayed earlier because I didn't write down a page. I want to ask you about it in just a second, but I can't remember what page was displayed, so I'm going to have to come back.

Ô _ _õ(__ 0*0*0*°_°__ ÔŒ Dr. Tulchin, did the Surgeon General report in 1971 on the issue of cigarettes and health?

A Sorry, sir. What was the question?

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Q Did he report in 1971 on the subject of cigarettes and disease?

A He may have. I don't remember.

Q How about 1979?

A He may have. I don't remember.

MR. WILNER: Do we have '79?

Q Let me show you the 1979 Surgeon General report. Have you seen it before? I guess you can't tell from this. Maybe I'll hand it to you.

MR. WILNER: May I, Your Honor?

THE COURT: Sure.

(Counsel furnishes document to witness)

A Thank you.

Q Have you ever read it?

A No, sir.

Q Ever seen it?

A No, sir.

Q Okay. With that, I'll take it back. Thank you.

Did you know that the Surgeon General's report of 1979 is about a thousand pages?

A I did not except -- until you handed it to me.

Q And all of the publicity that you talk about, it never even got a line, did it?

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MR. RILEY: Objection, Your Honor.

A I didn't say that.

Q Well, you didn't even know it existed?

A What I said was that I couldn't recall an exact date for successive reports, but that there had been a number of reports given publicity in the press, and that I had reviewed the press in the manner that I have described, and I apologized for not having recalled any specific article.

Q Okay.

A Sitting here, I cannot -- I don't have them all with me.

Q Let me see if this got any press. This is the foreword by Dr. Califano, Joseph A. Califano, secretary in 1979, the foreword to the Surgeon General report. Do you know who Joseph A. Califano, secretary to the department of H.E.W. was?

A Yes, sir.

Q You remember the name?

A I do.

Q Okay. Let's see if this got any press.

It begins up here. The document -- I guess my little thing is missing in action. All right, I'll make believe.

MR. RILEY: Can I have a page number, Your

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Honor?

MR. WILNER: Yes. I'll give it to you in a second. Just wait. It's III.

"This document is significant for another reason. It demolishes the claims made by cigarette manufactures and a few others 15 years ago and today: That the scientific evidence was sketchy, that no links between smoking and cancer was, quote, 'proven.' Those claims, empty then, are utterly vacuous now."

Do you know what the word "vacuous" means?

A I believe I do, yes, sir.

Q What does it mean?

A Empty.

Q And fifteen years of additional research overwhelmingly ratify the original scientific indictment of smoking as a contributor to disease and premature death. Indeed, even the cigarette industry's own research from January '61 through December '73 at a cost of approximately 15 million confirms the lethal dangers of cigarette smoking.

Ô _ _õ(__ 0*0*0*°_°__ ÔŒ Today there can be no doubt that smoking is truly slow motion suicide.

In truth the attack upon the scientific and medical evidence about smoking is little more

than an attack upon science itself, an attack upon the epidemiological, clinical, and experimental

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research disciplines upon which these conclusions are based.

Like every attack upon science by vested interests from Aristotle today to Galileo to our own, these attacks collapse of their own weight.

Do you see what Califano wrote then?

A Yes, sir.

Q Was that published?

A It was. Califano's opinions about smoking were publicized, yes, sir.

Q How about that piece, that the attack by the cigarette industry was really an attack upon science itself?

A Sitting here I can't tell you if that specific paragraph was quoted, but I can tell you that Mr. Califano was -- often appeared in the press criticizing smoking.

Q I'm to 1964, and this was the section you were asked to read, I think, about the counterblaste to tobacco. Is that how it is pronounced? It is not mentioned in here, but isn't that the thing you put up from sixteen hundred and one or four?

A 1604 the counterblaste.

Q It's got an E under counterblaste. That E is silent, though, right?

A Yes, sir.

Q It's not counterblaste?

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A No, sir.

Q Okay. And this talks about the early part of the 16th Century -- oh, incidently, who invented the cigarette rolling machine?

A I don't know.

Q It was American Tobacco. Didn't you know that?

A Sorry.

Q What was the effect of the cigarette rolling machine on cigarette consumption?

A Made cigarettes more accessible and made them cheaper.

Q Why?

A Because it was easier to produce that.

Q Well, but what about -- couldn't people always just roll their own? Why did the consumption go up when the machine was invented?

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A I expect because it was more convenient.

I have never been able to roll my own cigarette.

Q You do smoke, though?

A Yes, sir.

Q "In the early part of the 16th century soon after the introduction of Tobacco into Spain and England by explorers returning from the New World controversy developed from differing opinions as to the effects of human use of the leaf and products derived from it by combustion."

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Is that true, this controversy about differing opinions that was with us from the start?

A I wouldn't say that. The controversy here referred to as I understand the context of that statement refers to what is later called the scientific debate. There is no controversy among -- that I can find in the record as to the dangers of smoking.

Q Well, so you don't agree with this. It says, "Soon after the introduction of tobacco by explorers controversy developed from differing opinions as to the effects of the human use of the leaf and products derived from it by combustion or other means."

That means -- that doesn't mean to you that there was a controversy according to that?

A Well, all I can say is that there is no controversy that I have been able to find amongst people of different ages of the past as to the

dangers of smoking.

Q So what does this mean? It says, "...and products derived from it by combustion and other means."

What kind of products? What are they talking about?

A I assume it means smoking things like cigarettes and cigars.

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Q "...products derived from it..."; what is

"it by combustion"?

A The leaf.

Q Do you know what a combustion product is?

A It generally means burning.

Q Burning, something burns and some chemical

comes out of the fire, right? That is a combustion

product, right?

A (No response)

Q Well, all right. Can you explain this,

what this means, if it doesn't mean what I

suggested, "...the effects of the use of the leaf

and products derived from it by combustion"?

Ô _ _õ(!_ 0*0*0*°_°__ ÔŒ A The controversy to my -- as far as I read

the document, sir, the controversy in that statement

refers to statements that smoking could be

pleasurable and that smoking could be dangerous.

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Q How many grams of benzopyrene are in the

smoke from a Lucky Strike cigarette?

A I do not know.

Q Does it matter?

A I can't say that it matters or not

matters. I don't know how many that there are. I

don't know its role or function.

Q How about any of the carcinogens in the

smoke? Well, tell us what they are.

A I don't know all of them.

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Q Do you know any of them?

MR. RILEY: Judge, it's beyond the scope of his direct testimony, and it's beyond the witness' expertise.

THE COURT: Are you objecting?

MR. RILEY: Yes, sir.

THE COURT: All right. I'll sustain the objection.

MR. WILNER: Your Honor, may we be heard?

(Side-bar conference held outside the hearing of the jury)

MR. WILNER: This goes to A, his credibility, and B, if he testifies that people are fully informed of the risk, I'm entitled to inquire from him as to what he thinks the risk is or else

it's meaningless testimony. I mean, if he says they're informed of the risk, well, what risk?

THE COURT: Well, he's already said he's not a medical doctor and he doesn't know of what's in cigarettes and that he's not called as a witness to testify as to what's in the cigarettes.

MR. WILNER: But his lack of knowledge in that area at least has to be brought out in front of the jury, at least in a summary fashion, that he does not know, and he does not know the risk.

THE COURT: You can ask him if he knows what the ingredients of cigarettes are --

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MR. WILNER: Okay.

THE COURT: -- and he'll tell you no.

MR. WILNER: That's right. And I want to know that.

THE COURT: But, you know, the converse wouldn't be true. I wouldn't let you ask Dr. Feingold what the historical data shows.

MR. WILNER: They did it on cross.

MR. RILEY: And he testified about it too.

THE COURT: He testified. But I'm talking about he testified what the scientific historical data was, and he testified that -- but, you know, I don't think -- I mean, I think you can point out

that he doesn't know what is in cigarettes, but I'm not going to let you ask him each ingredient as you go down the list, when it was put in and what he knows about it. But what I am talking about, that is not something that he testified to.

MR. WILNER: It shows the limit of his knowledge.

THE COURT: I agree you can show the limit of his knowledge, but I'm talking about, you know, I think you're going -- you got to go from the general to the specific, rather than specific to the general, if you will.

MR. WILNER: Whatever, okay.

(Side-bar conference concluded;

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proceedings resumed before the jury)

(Change of reporter, 2:25 p.m.)

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Q Dr. Tulchin, what's in these cigarettes?

A Tobacco.

Q Anything else?

A Not to my knowledge.

Q Does it make a difference to you?

A Personally, perhaps, yes.

Q How would you find out?

A Well, today, I would go to a variety of sources if that were a subject of concern to me.

Q And how would you find out, what sources?

A The certain chemicals, tar and nicotine, are listed in cigarettes.

Q Where are they listed?

A There are publications of the federal government.

Q So tell me what the tar and nicotine of this cigarette is.

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18 A I said today. I'm sorry, what period are

19 you talking about?

20 Q Any time.

21 A The pack does not contain its contents.

Ô _ _õ(*_ 0*0*0*°_°__ ÔŒ 22 Q Well, do you know what it is?

23 A No, sir.

24 Q You say you'd go to some publication.

25 What kind of publication?

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1 A I would have to find out. I'd have to

2 make a search on that subject.

3 Q So you, who have studied this history of

4 cigarettes and disease, don't even know where you

5 would go to get that information?

6 A Well, sir, I was asked to study the

7 history of historical public awareness of links

8 between smoking cigarettes and health. In that,

9 studying that historical record, the precise

10 chemical contents of cigarettes is not a prominent

11 feature.

12 Q Well, maybe I misunderstood --

13 A Nor, if you'll allow me one further --

14 excuse me. May I?

15 Q Let me see if I can -- I didn't ask you

16 about the precise chemical content. I asked you

17 about what's the tar and nicotine in a Lucky

18 Strike.

19 A I don't know.

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Q And you don't know where you'd find it,
right?
A I'd go to the library and begin to look in
some scientific journals to find out and government
publications that list them.
Q I guess common knowledge does not include

knowledge about that, does it?
A I think that's a fair statement. Common
knowledge, historically, did not focus on chemical
content of cigarettes. It focused on the
substantial health risks of smoking cigarettes.
Q Well, let's talk about that just for a
minute. You showed us a picture of Dr. Auerbach,
remember?
A Yes, sir.
Q Wasn't that in "Life" magazine?
A Yes, sir.
Q What did Dr. Auerbach do?
A He was a physician and scientist.
Q I mean, what was his contribution in this
area?
A He performed some of the early studies,
autopsy studies.
Q Which showed...
A The relationship between lung cancer and
smoking.
Q Well, no. Give it -- a little more
specific. Why was it so important?

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A The link between lung cancer and smoking?

Q Not just the link. What did Auerbach do that was important?

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A Dr. Auerbach provides some of the early studies of the link between a specific disease, lung cancer and smoking.

Q How? What did he do?

A By performing autopsies.

Q And doing what with the autopsies?

A Checking the condition of the lungs of the -- and the physical condition of the cadaver against the history that he knew concerning their smoking.

Q Well -- and what was the finding that was so important?

A That there was a link between lung cancer and smoking.

Q What was the finding in the autopsies that were so important?

A I'm sorry, I don't know the answer to that.

Q Explain, if you can, what the significance of Dr. Auerbach's work, if you know, would be to the average consumer beyond just what you've said, Well, cigarettes cause cancer. Is there -- let me ask you this: Is there any other significance?

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A I think that's the -- that's very

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25 significant.

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1 Q Do you know what cilia are in the lung?
2 A Yes, sir.
3 Q Did Auerbach's work have anything to do
4 with that?
5 A I don't know.
6 Q Well, I thought that Dr. Auerbach's work
7 was widely publicized.
8 A There it is.
9 Q That's his picture?
10 A The same picture that was used in "Life"
11 magazine.
12 Q What about the cilia? Do you -- you don't
13 remember anything about it?
14 A The article in "Life" magazine focused on
15 the link between lung cancer and smoking.
16 Q Okay.
17 A And commented upon the studies that
18 scientists like Auerbach had performed to increase
19 our understanding of that linkage.
20 Q Did they show the three-stage process
21 between normal cilia and -- next, Ginny, please --

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22 and damaged cilia with metaplasia and --
next --
23 destroyed cilia and cancer in a heavy smoker?
24 A Is that the page from the "Life" magazine
25 article?

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Q No. I'll represent to you that's from a medical journal. So you haven't seen that, have you?

A I don't recall seeing that medical journal, no, sir.

Q No. I want to make sure when you answer me that I'm getting the right word. You said, I don't recall having seen the medical journal. I was really asking you, you don't recall seeing this whole process of damaged cilia, metaplasia and cancer in situ; you don't know about that, right?

MR. RILEY: Your Honor, if he could show the witness the article.

THE COURT: I think he's asking a general question, Mr. Riley, what he knows about that, wherever he saw it.

MR. RILEY: Okay.

A Would you restate the question, please?

Q You haven't seen this in all your research, evidently?

A Asked that way, I can't say definitely that I haven't. All I would say is, if that picture appeared in "Life" or "Time" or some other magazine that might be read widely, then I probably saw it. But I can't recall, sitting here, what page of what

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journal it was in.

Q So what's the importance of this sequence of changes from the destruction of the cilia to the metaplasia -- do you know what metaplasia is?

A No, sir.

Q To the cancer in situ; do you know what that is?

MR. RILEY: Your Honor, Dr. Tulchin is not here as a medical expert.

THE COURT: You want to object?

MR. RILEY: I object as it's beyond the scope of his expertise.

THE COURT: I'll sustain the objection, Mr. Riley.

Q Dr. Tulchin, did you -- were you aware that Dr. Auerbach -- let me ask you this: How many people who smoke get cancer in situ in their lungs; do you know?

A No, sir.

Q How permanent is cancer in situ?

MR. RILEY: Same objection, Your Honor.

THE COURT: I'll sustain the objection.

Q Dr. Tulchin, does the public know -- did they know in 19 -- do you know when this research was done by Dr. Auerbach?

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A Are you referring to that specific study?
No, I'm not -- I do not.
Q Was it done in the '50s, '60s, '70s, '80s or '90s?
A Dr. Auerbach performed his work, to my knowledge, from what I've been able to read about him in the public press, in the '40s, '50s and '60s. More than that, I can't say.
Q And if a majority of people who smoke were walking around with cancer in their lungs which had just not progressed, wouldn't that be an important thing for consumers to know about?
A Not necessarily. Consumers knew that smoking was hazardous to their health, and that they ran a significant and, perhaps, a mortal risk in smoking. I can't say that seeing that picture would have affected their appreciation of that. You already know that you're running a risk of killing yourself. I don't really see the difference.
Q It doesn't matter?
A I didn't say it doesn't matter. I don't know that it does or it doesn't.
Q Again, I want to make sure I'm asking you the right questions. I didn't just say seeing the picture. I said having the information that these

kinds of things, whatever you call them, were happening inside their lungs, even if they didn't know about it, and you say that that would not have

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affected anybody's perception about how risky the practice is; did I get you right or not?

A No, I think that's an unfair characterization of what I'm saying. I'm sorry.

Q All right. So would this -- and when I say this information, I don't want to repeat the whole thing I said, but the shorthand is, cancer in situ in the majority of smokers soon after they begin to smoke, let's assume that's the case, do you think that's important information or not?

A Important to whom, I'm sorry?

THE COURT: You mean to the public, Mr. Wilner?

MR. WILNER: I'm sorry.

Q To the public. You're talking about the public, right? Would that be important to them?

A Well, sir, I can only speculate that it might -- when you talk about people, individuals, I can't really comment upon a perception of any individual. I would expect that it would convince some people to stop smoking if they understood the information being presented.

Q Okay. Did you ever see that this information was presented by any cigarette company?

A Sir, I have seen information presented in the public media, information that is made available to consumers from a variety of sources. So in the

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"Life" magazine article, for example, there is a report that's accessible to millions of people which says that lung cancer is related to smoking.

Q I'm talking about this. I'm talking about these permanent cancers that occur in the majority of smokers. That's what I was talking about.

Have you ever seen that publicized by the cigarette industry?

MR. RILEY: Asked and answered, Your Honor.

MR. WILNER: He didn't answer it, Your Honor.

THE COURT: If you want to argue, go to the side bar.

MR. WILNER: Sorry.

THE COURT: I thought he said he didn't know whether he'd seen that or not.

MR. WILNER: I couldn't understand what he said. Can I ask him again?

THE COURT: All right.

Q Ever see it from the cigarette industry?

A Not to my knowledge.

Q All right. Now, you put up Dorn, remember Dr. Dorn? Remember who Dr. Dorn was?

A Yes, sir.

Q Who was Dr. Dorn?

A Dr. Dorn began his career in the American

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Cancer Society working with Dr. Cuyler Hammond, and then went on to become director of the clearing house on smoking and health.

Q Did Dr. Dorn conduct --

A I'm sorry. Did you say Dr. Horne or Dr. Dorn.

Q Dorn, Harold Dorn.

A I'm sorry, I was answering the wrong question. I misunderstood.

Q Try it again.

A Yes, sir.

Q Dorn with a "D."

A The Dorn -- the only Dr. Dorn of whom I'm aware is the author of a British medical study, if we're talking about the same person.

Q British? Okay. Dr. Harold Dorn, the author of the 1959 veterans study; are you familiar with that?

A Then I misspoke.

Q I thought you had used Dr. Dorn in your direct examination.

MR. RILEY: Your Honor, that mischaracterizes what we've done on direct.

THE COURT: All right, sir.

MR. WILNER: Sorry if I'm wrong. I'll withdraw.

THE COURT: He said he doesn't believe he did.

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Q Okay. Certainly you've heard of the 1959 Veterans Administration study, haven't you?

A It was reported in the press, yes, sir.

Q How big a study was it?

A I don't remember.

Q What was reported?

A It was -- as I recall, the press reported on the links between smoking and cancer amongst veterans in Veterans Administration hospitals.

Q Why was the study important?

MR. RILEY: Judge, object. He's not here as a medical expert again.

MR. WILNER: To history. That was my question.

THE COURT: Then ask him in that way.

Q Why was the study important to history?

A Well, as I indicated in my direct testimony, any particular study, including this one about which you were talking, is a confirmation of common knowledge about the dangers of smoking, and that's why it's important to us. It confirms and makes more precise the public awareness of the health risks of smoking.

Q The health risks, you said?

A The general health risks of smoking.

Q What are the general health risks?

A That it's dangerous to your health and you

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run the risk of dying.

Q That's it, then. Dangerous to your health and -- let me write this down. I want to make sure I don't misquote you. Bear with me a minute. Let me get this down, okay.

So the dangers of smoking of which everybody was aware in 1957 or '54, when, always?

A Through the '40s, '50s and '60s actually.

Q Oh, okay. Even in the '40s, they were aware of the dangers of smoking. All right. What are they that they were aware of?

A That you ran a risk of dying.

Q Ran a risk -- a risk of dying, okay.

Anything else?

A That's a pretty powerful warning, pretty powerful piece of information to me.

Q Well, I'll ask you about it. Believe me. Anything else?

A I think that's enough for me to remember at this time.

Q Okay. What's the risk?

A As we --

Q You said it ran a risk. What did people think they ran?

A They had information and were aware that smoking damaged the lungs, damaged the heart. The effect you may recall, if you read the

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"Counterblaste," affected the brain. It was habit-forming. It was a habit that was hard to quit.

Q "Counterblaste" told them about this in 1601, right -- 04? I want to get that date straight.

So what you're saying, the "Counterblaste" idea, that was basically what people knew?

A That's a summary --

Q Yes.

A -- of what people knew.

Q Bad for you?

A Not just bad for you, very bad for you.

Q So then when Dorn came around in 1959 -- let me ask you this. If you were going to evaluate a risk, how do you evaluate with respect to whether you should do it or not?

A You're asking my personal opinion?

Q No. How does the public?

A I can't speak for the entire public.

Q Well, you've been speaking for the public, have you not?

A I've been speaking about information available to the public, common knowledge and the public awareness. I can't speak for decisions made in this specificity.

Q Well, what is the significance to the

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17 public between one risk and another risk?

18 A Smoking is a significant risk and a mortal

19 risk.

20 Q Significant and morbid?

21 A Mortal, you run the risk of dying.

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23 A Compared to something that's not

24 considered a mortal risk.

25 Q Okay. Well, do -- does -- in 1950 --

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1 let's say 1960, what did the public think, if you

2 know, its risk of dying from smoking would be?

3 THE COURT: You mean, are you asking him

4 for percentage or --

5 MR. WILNER: Sure.

6 Q Any way you want to evaluate it, either

7 percentage or how many out of ten who smoked

8 regularly or compare it to some other generally

9 assumed risks in life, like automobiles or alcohol,

10 anything like that?

11 MR. RILEY: Judge, that's all beyond the

12 scope of the witness' expertise. We haven't offered

13 him in those fields.

14 THE COURT: I'll sustain the objection.

15 Q Dr. Tulchin, when you say that the public

16 knew that they ran a risk of dying, how much risk

17 did the public know that it ran?

18 A A significant risk.

19 Q Is that the only way you can describe it?

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20 A Sir, in terms of common knowledge, that's

21 all I can do.

Ô _ _õ(H_ 0*0*0*°_°__ ÔŒ 22 Q All right. Let's go now -- remember we

23 talked about Dr. Dorn. Let me show you this chart

24 from Dr. Dorn's study. Was it understood in 1959

25 when the veterans study was done that cigarette

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1 smokers would run a 50 percent risk of dying?

2 THE COURT: What do you mean

3 "understood"?

4 MR. WILNER: By the public?

5 A They ran a 50 percent.

6 MR. RILEY: Judge, again I object. It's

7 beyond -- we haven't offered him in terms of the

8 epidemiological evidence.

9 MR. WILNER: Just public evidence.

10 THE COURT: Gentlemen, to the side bar.

11 (Side-bar conference held outside of the

12 hearing of the jury)

13 MR. RILEY: Judge, this question is beyond

14 the witness' expertise. He wasn't offered as an

15 epidemiologist.

16 THE COURT: I think it is, Mr. Wilner. If

17 you want to get him to answer that he doesn't know

18 any other thing about the particular studies or the

19 results of them or where people would go find them,

20 that's one thing. But --

21 MR. WILNER: I want --

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Ô _ _õ(J_ 0*0*0*°_°__ ÔŒ 22 THE COURT: -- he is called as an expert

23 on what knowledge was in the public domain at that

24 point. And he's testified to that. And you're

25 asking him specifically about those reports. And

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1 he'll tell you he doesn't know anything about those

2 reports, what they found other than --

3 MR. WILNER: I can rephrase the question

4 to indicate -- to question him on what was given to

5 the public. That is the basis of the cross. He has

6 made statements in here that the public received the

7 critical medical information, and I'm challenging

8 him.

9 THE COURT: I don't think he said that. I

10 don't think he said that at all.

11 MR. WILNER: It's a fair implication of

12 what he said. He certainly said words to that

13 effect. He said they were amply warned.

14 THE COURT: And you can ask him if he

15 knows of any study that any particular critical

16 information -- but, I mean, you know, if you're

17 going to go over every experiment -- I mean, every

18 study that was made and ask him.

19 First place, he says he doesn't know any

20 of that, he doesn't -- and he hasn't testified to

21 any of that. He's here, basically, on what the

Ô _ _õ(L_ 0*0*0*°_°__ ÔŒ 22 average person or common man would have --

23 MR. WILNER: -- seen.

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THE COURT: Yes.

MR. WILNER: That's right.

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THE COURT: And you can ask him if that would include any of the actual results or anything. All he said is, the bottom line is that people would probably -- he even went so far as to say that in one of the articles, that a cigarette company's response was usually on the back page, and stuff like that.

MR. WILNER: I know.

THE COURT: I mean, I don't think it's fair to ask him scientific questions when he never said that the scientific knowledge was 50 percent of the people who die -- who smoke -- if he'd said that, you could go all over that study.

MR. WILNER: I won't ask him scientific questions.

THE COURT: All he said, he was asked to determine what was the general knowledge. And the general knowledge was just what he said in his opinion. Now, you can't --

MR. WILNER: I don't have to accept it.

THE COURT: No, no. But I'm saying you

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can question him on that, but you're going to the specifics. He didn't testify to any of those specifics that you're asking him about. That's what concerns me.

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MR. WILNER: If it's in his field, then I think I'm entitled to inquire as whatever.

THE COURT: What is his field?

MR. WILNER: As to what the public received.

THE COURT: Okay. And you can ask him if they got any of the results of the experiment, anything other than general knowledge about it, and he should say, No, they didn't.

MR. WILNER: If he says, No, fine.

THE COURT: Then you don't ask him about specific questions about an experiment which he says he doesn't --

MR. WILNER: Only what the public received.

THE COURT: That's why he was presented.

MR. WILNER: Okay. That's what I'll ask him.

THE COURT: You can show that he didn't have any of that knowledge and he didn't get it by reading all of the literature.

Ô _ _õ(P_ 0*0*0*°_°__ ÔŒ MR. WILNER: Okay. Right, that's right.

THE COURT: That's what you are intending to show.

MR. WILNER: That's what I'm intending.

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THE COURT: But I think you can ask him general questions. And if he answers them specifically, then you can go into that particular area.

MR. WILNER: Okay.

MR. RILEY: Thanks, Judge.

(Side-bar conference concluded; proceedings resumed before the jury)

Q Did the public get specific information from the Dorn study to the effect that the death rate among smokers was twice as high as nonsmokers, and, therefore, smokers were -- had a 50 percent chance of dying; did they get that specific information?

A I think -- most of the reports of this, of which I'm aware, focus on the fact that the more you smoke, the more dangerous it is. And I'm not a statistician, but that seems to be what I get out of this graph.

And that's certainly what was reported in all of the newspapers and all of the magazines that I looked at. I can't recall, sitting here, whether this particular graph appeared in every newspaper and magazine.

Q You said "every"?

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A I can't recall. I don't know that.

Q In any?

A What I can recall and say --

Q Could you answer my question? Did it occur in any?

A It may have. I don't recall any sitting here.

Q All right.

A But the point about increasing death rates with smoking certainly was well-publicized.

Q Let me show you another one. You remember who Hammond was, right?

A Dr. Cuyler Hammond.

Q Right.

A Yes, sir.

Q In fact, you talked about the hearings on false and misleading advertising in 1957, remember that?

A Yes, sir.

Q Do you know whether Dr. Hammond's results appeared in the newspaper to the effect that only three per 100,000 nonsmokers ever get lung cancer, but 217 per 100,00 heavy smokers do?

A The results of those hearings did, in fact, receive wide publicity. And the articles, of

which I'm aware, focused on two things. First, the

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more you smoke, the more dangerous it is.

Q Let me see if I can -- I don't mean to interrupt you, but if we could move forward. What I'm specifically asking you was about this -- the concept presented here about the nonsmokers almost never getting it, the heavy smokers getting it very much. Do you know or do you not know whether that specific concept was discussed in the newspapers; and, if so, where?

MR. RILEY: Judge, I just object to Mr. Wilner interrupting the witness' answers.

THE COURT: Okay. Let him finish his answer, Mr. Wilner.

A May I proceed? What I was trying to say is that the press reports of these hearings, which were disseminated very widely -- and one example of which, I tried to show in testimony -- essentially, first, the more you smoke, the more dangerous it is.

And second, that public information concerning the health risks of smoking was widely disseminated and widely known.

Q All right. I was talking about this specifically.

A Yes, sir. And I was trying to explain

that the public awareness of this, as I have reviewed the historical records focuses on the general point. Again, I apologize. I cannot recall whether this particular graph appeared in a

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newspaper or not. It doesn't -- I can't tell from your slide where it was printed.

Q Let me go back to the Surgeon General's '64 report that you said you read. And, again, this is that same quote that you talked about earlier.

The controversy and the products derived from it by combustion and other means. Pipe smoking and chewing and snuffing of tobacco were praised for pleasurable and reputed medicinal actions. You mean people have said that it was good for you?

A People have said it that was pleasurable.

Q This says -- what does "medicinal" mean? What does that mean?

A The reference there is to notions that smoking could make you relaxed, that some people derived sensual pleasure from smoking, and that's why they enjoy doing it.

Q That's what "medicinal" means, that it makes you relax?

A That's how I would interpret it. I don't

know if there is any other meaning than that.

Q So nobody ever claimed that smoking was good for you, despite the word medicinal?

A Smoking is pleasurable; is that what you mean?

Q Well, I don't know, sir. I mean, I read

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this and it says snuffing of tobacco were praised for pleasurable and then it has the word "and" reputed medicinal actions. Does that mean that the word reputed medicinal action doesn't add anything to pleasurable?

A Reputed is the word I would suggest. If I were reading that, as we are, I would say that reputed medicinal actions to me suggest that the author of this phrase is casting doubt on anybody having suggested medicinal actions.

(Change of reporters, 2:55 p.m.)

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Q And is he, is he saying -- since we're interpreting what the author said, is he saying that people did? Even though he doesn't believe it, that it's true, he says that people have?

A Have...?

Q Claimed medicinal action. Right?

A That's how I would read that phrase.

Q So the Surgeon General says that people have claimed medicinal action from cigarettes.

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Do you agree or disagree?

A That that's what the Surgeon General's report said?

Q Yes.

A Yes, sir, that's what it said.

Q Have they done it?

A I'm sorry?

Q Have people claimed medicinal effects from cigarettes or tobacco?

A The only such claims of which I'm aware occurred early in the 19th century, for example, when some people thought that it might be an effective diuretic.

Other than that, I -- as I said, unless you consider relaxing, lowering stress to be a medicinal effect, I don't know.

Q At the same time, smoking was condemned as a foul smelling, loathsome custom, harmful to the brain and lungs.

The chief question was then, as it is now, is the use of tobacco bad or good for health or devoid of effects on health.

Do you agree that -- you didn't read that part of the Surgeon General report, did you?

A I did, sir. And I disagree with that phrase.

Q You do disagree with it?

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12 A I'm sorry, I do.

13 Q So you were happy to read the part -- this

14 part up here. But when it got to that, then you

15 disagreed? Okay.

16 A Well, I'm happy to read the entire

17 document. I tried to put it in context without

18 quoting one phrase out of context, sir.

19 Q Do you disagree with the conclusion of the

20 Surgeon General in 1964 about cigarettes and cancer?

21 A Are you referring to its conclusion that
Ô _ _õ(__ 0*0*0*°_°__ ÔŒ 22 there was a link between lung cancer
and smoking?

23 Q No, sir, that cigarettes cause cancer.

24 A No, sir. I do not disagree.

25 Q You do not disagree?

1 A No, sir.

2 Q Okay. You mentioned that youth is the

3 target of educational efforts against smoking.

4 Do you remember you said that?

5 A I believe so.

6 Q Are they also the target of advertisements

7 trying to get them to smoke?

8 A I don't know that.

9 Q You don't know one way or the other?

10 A No, sir.

11 Q Does that make a difference?

12 A My -- my knowledge?

13 Q Sure.

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14 A I'm sorry, sir, I don't understand.

15 MR. RILEY: I object again. He's not

16 offered as an expert.

17 THE COURT: Wait a minute. I'll sustain

18 the objection.

19 MR. WILNER: Okay.

20 Do we have the tape? All right.

21 Q Do you remember you -- you played a tape
Ô _ _õ(a_ 0*0*0*°_°__ ÔŒ 22 from the 1955 Edward R. Murrow, "See it Now."

23 Do you remember?

24 A Yes, sir.

25 Q Where did you get that?

1 A From a film archive in Florida.

2 Q And how did you know about it?

3 A A colleague of mine, an historian, had

4 done a review of that archive.

5 Q And you said that the "See it Now Program"

6 was on how often?

7 A I believe it was weekly.

8 Q And it was on for, what, an hour?

9 A I think it varied in time. My

10 recollection is that it normally was on a half

11 hour and, on occasion, it was an hour. But I'm not

12 100 percent certain.

13 Q What, what channel -- I mean, what

14 network?

15 A I believe it was CBS.

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16 Q And how, how many years was it on?

17 A I don't recall.

18 Q How many years -- of all of the shows, how

19 many shows concerned cigarettes?

20 A I can't answer that. I don't know.

21 Q Well, when you -- when you were talking
Ô _ _õ(c_ 0*0*0*°_°__ ÔŒ 22 about it before, though, you said,
Well, look, this

23 is a very important show and it had discussions with

24 experts about cigarettes and disease.

25 Do you remember?

1 A Yes, sir.

2 Q Were you meaning to say that the -- the

3 show, that every time it came on it talked about

4 this?

5 A No, sir. What I meant was that particular

6 show was important for us to understand what the

7 common knowledge about the health risks of smoking

8 were.

9 Q Okay. And whose -- who pulled the

10 excerpts out of the entire show?

11 A I did.

12 Q Okay. So the one -- the stuff that you

13 left behind you didn't think was that important to

14 show, right?

15 A It didn't convey the point that I was

16 trying to make, which is that smoking and health are

17 connected in the public mind.

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Q Okay, stand by one -- I just had it, just a minute.

And what year was that show produced?

A Are you referring to the specific show from which we took film clips?

Q Yeah, yeah.

A I believe it was 1955.

Q Okay. And how, how did they put that show

together? I mean, who -- who put it together?

A I don't know specifically who put it together.

Q How did they do their research?

A Well...

Q How did they decide -- I'm sorry, strike that.

How did they decide who to talk to?

A Well, if I recall, Mr. Murrow says in his preamble to the show that they conducted a survey of -- of various authorities and selected people on different sides of the discussion.

Q Now, you know who the TIRC was, don't you?

A Yes, sir.

Q And the jury has seen a chart of the TIRC and the -- and the contributions to the TIRC from the various cigarette companies and from Hill and Knowlton.

Do you know who Hill and Knowlton was?

A Hill and Knowlton is, today, a public

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relations firm.

Q Well, you know that the TIRC hired them to do their public relations, do you?

A No, sir.

Q Okay. But do you know why the TIRC -- the

TIRC was put together?

A It was put together to conduct research on the links between smoking and health.

Q How do you know that?

A They made statements in the press at various occasions.

Q Okay. Let me get this straight. You think the TIRC was for doing research?

A They may have had other purposes of which I'm unaware. But they -- in the public press, they appeared as sponsoring research.

Q So they announced themselves in the public press as if they were a research organization?

A No, sir, I don't think I said that.

Q Well, is that true?

A I don't know how they announced themselves. Are you talking about ads?

Q No, I'm -- I'm following your lead.

You said you read about them in the press, right?

A Yes, sir. What I meant --

Q Wait, go one step at a time.

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You said you read them in the press. And you said that, based on what you read about them in the press, they were a research organization; is

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that true?

A No, sir.

Q All right.

A I misspoke, if I said that. What I meant to say was that I read about them in the public press in news articles concerning the links between the hazards of smoking and that representatives of the TIRC frequently would be included in some of those articles.

Q Okay. And where did you get the idea that they were a research organization?

A In one of those -- and I'm sorry, I can't recall precisely the date -- they announced they were going to make research grants for the study.

Q Okay. Did they say anything in their public press about being a PR or a public relations organization?

A I don't recall that phrase. Although, representatives of the TIRC in the articles to which I've referred identified themselves as representing the tobacco industry.

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Q Well, I understand they were representing the tobacco industry.

My question was whether they were a public

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relations effort by the tobacco industry as opposed

to a research effort.

A As opposed to, I can't -- I don't know that.

Q Well, I'm just going on based on what you've read.

Was there any disclosure in what you've read that they were a public relations organization as opposed to a research organization?

MR. RILEY: Judge, it's been asked and answered several times.

THE COURT: Yes. I'll sustain the objection. I think he said he didn't know that.

MR. WILNER: Well, Your Honor, with all due respect, I think -- I don't know -- I think he was confused about my question. I would like to rephrase it.

I think he was talking about his own knowledge, not what was in the press. May I ask him one more --

THE COURT: I thought that's what you asked him, about his knowledge of what was in the press.

MR. WILNER: All I'm asking him is what was in the press.

THE COURT: Whether he knows what was in

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the press or not?

MR. WILNER: Sure.

THE COURT: Or his knowledge of what was in the press?

MR. WILNER: I don't know how to distinguish, Your Honor. I'm sorry.

THE COURT: I don't either. That's why I'm saying -- all right. You can ask him.

MR. WILNER: All right. Thank you.

Q Let me see see if I can clarify.

Was, was in the press that you saw that the TIRC was identified as a public relations organization or was it identified as a research organization?

A Sir, what I tried to say earlier -- and I thought I did. Let me try again.

Q All right. Go ahead.

A In the articles that I read, representatives of the TIRC would be quoted. And they would be identified as representatives either of the TIRC or of the TIRC and the tobacco industry.

I did not mean to say that they were identified explicitly either as one or the other. So I'm afraid when you said as opposed to, I didn't understand what you were meaning.

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Q Okay.

A I hope I made myself clear.

Q All right. Did the TIRC have any role in the preparation of the Edward R. Murrow television show, "See it Now"?

A I do not know that.

Q Let me show you a document that's been marked in evidence as Hill and Knowlton No. 13.

Here it says, Tobacco Industry Research Committee information activities, August and September 1954. Conferences were held with the publishing groups.

MR. WILNER: Go on down, Ginny. I'm sorry I don't have my pointer.

Q Edward R. Murrow Television Show.

Continued assistance has been given to the staff of the proposed "See it Now" program being developed for presentation later in the fall. The exact date is not yet set.

A conference was held with Edward R. Murrow, Fred Friendly, his producer, and Arthur D. Morris, research and writer of the Tobacco Industry Research Committee, at their offices in the Empire State Building.

Do you see that?

A It's a little fuzzy. I'm making it out,

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yes, sir.

Q We will get you a -- yes.

MR. WILNER: Where is our other copy?

(Mr. Wilner confers with co-counsel)

THE WITNESS: Is it possible to sharpen the focus on this? It's just fuzzy, that's all.

THE COURT: Can you focus yours a little better?

THE WITNESS: It's just a little fuzzy here, Mr. Wilner.

MR. WILNER: I don't know. Ginny, can you focus it a little better?

THE COURT: If you could get it focused there, it would be better on the individual monitors.

MR. WILNER: Okay.

MR. RILEY: Your Honor, I'm sorry to interrupt. Could we get a tab number?

MR. WILNER: Thirteen.

Q So did you know that the TIRC had met with Edward R. Murrow inside their own offices in the Empire State Building?

A No, sir.

Q Do you know why they did that?

A No, sir.

Q And in terms of who they selected to be on the show, do you know what input Hill and Knowlton

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had into that show?

A No, I do not.

Q All right. Well, let's -- with that, let us -- I want to show some of the sections of the show that you didn't show, if you understand what I meant. Some of the sections of the Edward R. Murrow --

MR. WILNER: You can take that off, Ginny.

Q Some of the sections of the Edward R. Murrow "See it Now," from 1955 that were not shown earlier.

Then I want to ask some questions about it, so if we can play the tape.

MR. WILNER: Thanks.

Q I may stop it from time to time and ask you. It's just a few minutes.

(Video played in open court)

...becomes president of the American Medical Association, he speaks now. However, as a physician who does not believe there is any important relationship between smoking and cancer.

MR. WILNER: Stop there, please.

Okay, thanks.

Q So it wasn't only who we saw earlier. It wasn't only Heller and Hammond, but also this gentleman whose name is Hoff, I think.

MS. HARTLEY: Hess.

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MR. WILNER: Thanks.

Q Hess of the AMA, right?

A I didn't -- I'll take your word for it. I didn't hear who that was, I'm sorry. At the beginning of the clip I didn't hear the name.

Q Oh, I thought you had gone through the whole show and decided yourself what to leave in and what to take out.

A Yes, sir.

Q So certainly you remember this, right?

A I remember seeing it. I'm sorry, I don't remember all the names.

Q All right. But what basically did he say?

A He disagreed with the statistics or the conclusions from the statistical studies.

Q And on what basis?

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A Well, he referred at the end of his statement, just before you cut him off, about they were just statistics, I believe he said.

Did I hear him correctly?

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Well, I mean, that wasn't -- do you think that was the end of his statement?

A I don't know, sir.

Q How long did his statement go on?

A I don't recall.

Q Did you make any note of this program before you cut out the parts you wanted to show the

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jury?

A I read -- I watched through it several times.

Q All right. Well, let's show it again.

(Video played in open court)

More than anything else, you've heard the old saying the lies, damn lies in statistics. You can make statistics do anything if you are interested in coming up with a certain objective.

Now, I don't mean to say that the statistics that are given to us on various things are incorrect. But very often the individual is so enthusiastic that he points to statistics to prove his point.

Ô _ _õ(y_ 0*0*0*°_°__ ÔŒ How do you account for the rise in lung cancer?

Well, I think -- I don't think smoking cigarettes particularly has anything much to do with

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it in the first place. We have, through scientific medical achievement, prolonged human life from an age of 37, after the turn of the century, to 67 in the male of today and 72 for our women.

And that means that a very large proportion of our population are going to live in the cancer age, which is usually after 40, although cancer can occur under 40. But most of our cancers occur after 40.

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10 The second reason is that we have a very
11 much more improved scientific approach to diagnosis.
12 And we are able to diagnose cancer today,
13 particularly of the lung, much easier than we were
14 able to diagnose it 15 or 20 years ago.
15 In other words, we are discovering cancer
16 today when 15 or 20 years ago we were unable to
17 discover it until it was ready to kill.
18 Are you a smoker, Dr. Hammond?
19 Yes. I see where it's done a great deal
20 of harm. Cigarette smoking may be a smelly, dirty
21 and very expensive habit. I've been a smoker all my
Ô _ _õ({_ 0*0*0*°_°__ ÔŒ 22 life. There have been periods when I have quit
23 smoking.
24 But all of my life I've smoked and I have
25 enjoyed smoking. I would rather, myself, live 15

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1 very, very active productive years than live 25
2 years as a potato unable to do anything but just
3 exist.
4 And that isn't the object of scientific
5 medicine. The object of scientific medicine is to
6 increase the age with comfort. I think we should do
7 everything in moderation.
8 And I think that we should smoke in
9 moderation. We should drink in moderation. And
10 we should eat in moderation. More people kill
11 themselves by digging their graves with their teeth

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than by any other thing that we know of.

And I would say that if an individual is worried about his cigarette smoking, that he should go to his family physician and he should take the advice of his family physician as to whether he's smoking too much or whether he should stop smoking.

This is Dr. Charles Cameron.

MR. WILNER: Stop it there, stop there.

Thanks.

Q We will do Dr. Cameron in just a minute.

Ô _ _õ(}_ 0*0*0*°_°__ ÔŒ 22 But you knew the position of the AMA in

1955, as expressed by this doctor?

A I knew his expression, yes.

Q He was, he was announced as the president

of the AMA?

A I misunderstood. I thought it said he was past president of the AMA.

Q And do you know the relationship of the AMA and the cigarette industry in the mid-'50s?

A No, sir.

Q You didn't? You didn't read about the -- how the AMA and the cigarette industry, or any relationship that the cigarette industry had with the AMA in the mid-'50s.

MR. RILEY: Asked and answered, Your Honor.

THE COURT: I'll let him answer again.

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A I don't know what you mean by relationship. Could you either be more specific or do you want me to report what I recall from reading the public historic record?

Q Well, did you know who Dr. Haag, H-a-a-g, was?

A No, sir, I'm not familiar with that name.

Q Did you know what he held -- whether the American -- he worked at the Medical College of Virginia funded by the American Tobacco Company --

A No, sir.

Q -- and was influential in the AMA?

A I don't know the answer to that.

Q All right. So in this program that we just saw, this person identified either as the current or past president of the AMA says, I would rather -- he says, You can prove anything with statistics.

What -- what was he referring to in the historical context?

A He was referring to the series of -- as I recall, and now that you ask that, when he was introduced, Mr. Murrow said that he was speaking here as a physician.

So I was confused by your earlier question about his relationship to the AMA. I'm sorry, that's what confused me.

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16 As I recall, what he's referring to is
17 the series of statistical studies to which you and
18 I earlier have referred linking lung cancer and
19 smoking cigarettes.
20 Q By saying you can prove anything with
21 statistics, that's kind of debunking those studies,
Ô _ _õ(_ 0*0*0*°_°__ ÔŒ 22 isn't it?
23 A He certainly took that position, yes, sir.
24 Q So a person listening to -- have you ever
25 heard of that before? Remember, we turned -- we

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1 talked about some slang, or you have, some certain
2 terms that are slang.
3 You can prove anything with statistics,
4 have you heard that before?
5 A I have.
6 Q A lot of people believe it, don't they?
7 A They may. I don't know the answer to
8 that.
9 Q Is it -- let me ask you this. Is it
10 common knowledge, quote, that you can prove anything
11 with statistics?
12 A I don't know the answer to that, I'm
13 sorry.
14 Q How would you find out the answer to that?
15 A By conducting research on that subject, if
16 that were of interest to you.
17 Q Have you ever seen -- ever heard people
18 talk about it?

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19 A I have heard individuals talk about it,

20 yes.

21 Q He also said, I would rather live -- and I
Ô _ _õ(ƒ_ 0*0*0*°_°__ ÔŒ 22 don't remember what the years -- I would rather live

23 25 years happy and fulfilled or I would rather do

24 that than live 45 years as a potato.

25 Did you hear him say that?

1 A I believe he said he would rather live

2 15 productive, enjoyable years than 25 years as a

3 potato.

4 Q Whatever the numbers were. The idea is

5 I would rather live it up and die than live as a

6 potato, right?

7 A Yes, sir.

8 Q Isn't that something you've heard before?

9 A I never quite heard that comparison before

10 about being a potato. Are you talking about the

11 comparison I would rather live 15 years of fun

12 rather than 25 years without fun?

13 Q Sure, yeah.

14 A That certainly is something I have heard

15 before.

16 MR. WILNER: I need the defendant's

17 exhibit for identification, the "R" exhibit on the

18 different press releases. Thanks.

19 THE COURT: Mr. Wilner, when you get to an

20 appropriate place, we will take a break.

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21 MR. WILNER: All right. Soon, soon.
Ô _ _õ(..._ 0*0*0*°_°__ ÔŒ 22 Q So based on this, I don't know, my

23 question was, was that -- does that have a ring that

24 rings -- rings true to the -- in popular wisdom

25 that, you know, Look, you got to die of something,

Ô _ _ì
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1 why not -- might as well have a good time.

2 MR. RILEY: Judge, I object to the form.

3 THE COURT: I'll -- I'll sustain the

4 objection, Mr. Wilner. If you'll rephrase it.

5 Q Is the -- the concept that is addressed in

6 this unusual language of a potato, isn't that a

7 concept that has -- has a long history in -- in

8 popular wisdom, if you know?

9 A I guess I'm just not sure, I guess.

10 Q Okay. Now, how -- how did the "See it

11 Now" people get to this -- this AMA doctor? Was it

12 through TIRC?

13 A I don't know the answer to that.

14 Q Okay.

15 A All I can tell you is what Mr. Murrow said

16 in his program, that he tried to get different

17 points of view on -- on the issues under

18 discussion.

19 MR. WILNER: Will you find Cameron.

20 Thanks. You handed me Cameron? I need the earlier

21 one.
Ô _ _õ(‡_ 0*0*0*°_°__ ÔŒ 22 Excuse me, Your Honor, we've got a bunch

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of stuff.

Q All right. So next on the tape is Dr. Cameron. Does the name ring a bell?

A No, sir.

Q You don't know who Dr. Cameron is?

A I don't recall sitting here, no, I'm sorry.

Q Okay. Let me show you something that's been marked in evidence.

MR. WILNER: Floyd, help me about the citation. Thanks, of the "Why Worry" piece. It's in "Public." All right.

Now, where is this from? It's not dated. This thing isn't dated. It was '53, but it's not dated. I'm sorry, Your Honor.

(Mr. Wilner confers with co-counsel)

MR. MATTHEWS: It's Exhibit 3, Tab 10.

THE COURT: Well, do we need a recess?

MR. WILNER: This is a good time to break. Let our confusion be the subject of a break. That will be fine.

THE WITNESS: It's 20 minutes after three, ladies and gentlemen. If you're back in the jury room at 20 minutes till, we will resume.

THE BAILIFF: This court is in recess till 20 minutes till three.

(Jury exits courtroom, recess)

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25 THE BAILIFF: All rise, please. This

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1 court is back in session. Please be seated.

2 THE COURT: Are you ready to proceed,

3 Mr. Wilner?

4 MR. WILNER: Yes, Your Honor.

5 THE COURT: Mr. Riley?

6 MR. RILEY: Yes, Your Honor.

7 THE COURT: Bring them in, please,

8 Mr. Backer.

9 (Jury enters courtroom)

10 THE COURT: All right. Mr. Wilner, you

11 may proceed any time you're ready.

12 MR. WILNER: May it please the Court.

13 Q Dr. Tulchin, is it, I'm sorry,

14 Dr. Tulchin, we are about ready -- I want to ask you

15 some more about this tape on "See it Now."

16 But then the next person up is Charles

17 Cameron. I think you said you didn't know who he

18 was?

19 A I can't recall, no, sir.

20 Q Doctor, to refresh your recollection,

21 Dr. Cameron was the medical and scientific director
Ô _ _õ(‹_ 0*0*0*°_°__ ÔŒ 22 of the American Cancer Society in the
mid-'50s.

23 Does that refresh your recollection?

24 A Thank you, sir.

25 Q What opinions did Dr. Cameron express on

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1 the tape that you showed to the jury, or the parts
2 on the tape that you didn't show to the jury?
3 A I don't recall.
4 Q Do you, do you know whether Dr. Cameron
5 had in 1954 -- well, let me back up for a second.
6 You remember Hammond, right, E. Cuyler
7 Hammond?
8 A Yes, sir.
9 Q And he was who?
10 A He was -- at what time, sir, are you
11 referring, '50s?
12 Q Well, when he did his famous studies.
13 A He was director of statistical studies of
14 the American Cancer Society.
15 Q Okay. And you remember in l953, he was
16 quoted -- oops, sorry, we were on the wrong clip.
17 In l953, Dr. Cameron -- over here, a Yale
18 professor.
19 MR. WILNER: See if you can zoom in on
20 that. Thanks.
21 Q A Yale professor who's director of
Ô _ _õ(_ 0*0*0*°_°__ ÔŒ 22 statistical research for the American Cancer
23 Society, E. Cuyler Hammond, says there is still
24 no reliable statistical evidence to prove that
25 cigarette smoking causes cancer.

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This was, this was in evidence and was shown to the jury. It's from l953, titled the "New York World Telegram, Cancer and Tobacco, It's a Question of Mice."

Now, with that preface, you know that Dr. Hammond was doing a large-scale statistical study for the American Cancer Society at that time, right?

A Yes, sir.

Q And in the end of l953, when he was interviewed, he said he didn't think that there was evidence at that time, in November -- December 17th, '53, right?

A Evidence of proof, he said.

Q Yes. Right?

A Yes, sir, that's what he says in that article.

Q Okay. And then the -- although the study was supposed to go on for many years and did, the preliminary report of the study was considered so important that it was announced in the middle of 1954.

Do you remember that?

A Yes, sir.

Q And, in fact, Dr. Charles Cameron was the

medical and scientific director of the American

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Cancer Society, which had funded the study.

Do you remember that?

A I didn't recall his name, but I do recall that study.

Q Okay. And do you remember that as of June 17th of that year, which was immediately after publication, Dr. Cameron said personally, I'm not convinced that the Hammond-Horn theory of cause and effect relationship between heavy cigarette smoking increases susceptibility to death or cancer in general is as yet entirely proven.

One cannot at this time exclude the possibility that heavy cigarette smoking and a tendency to cancer are both expressions of the more fundamental causes of a constitutional or hormonal nature.

MR. RILEY: Your Honor, can we get the exhibit and tab for the record?

MR. WILNER: Sure.

Q And this appeared in the "U.S. News & World" report, July 2nd, 1954, under the title "Why Worry?"

Did you see it when you looked through the --

A Yes, sir, I did.

Q You found this one?

A Yes, sir.

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Q Okay. And that within a week, by June 23rd, Dr. Cameron evidently had come around and was saying that -- over here, the situation -- by June 23rd, he was saying the situation is a bit complicated. Originally --

MR. WILNER: Slide it up just a little, Ginny. Thank you.

Q Originally I thought the association might be an indirect line that there might be certain individuals disposed by the virtue of their glandular makeup to develop both cancer and addiction to heavy smoking.

Now it seems with this report, with this specific reference to the incidence -- it's a long sentence. Now it seems this report makes it seem much more likely that the relationship is one of cause and effect.

Did you know that Dr. Cameron changed his mind soon after the Hammond-Horn paper came out?

A Sir, no, I didn't know that this individual changed his mind.

Q Okay. But did you know then that the

public received, within a year, a denial from Dr. Cameron of the American -- I'm sorry, a denial from Dr. Hammond and then, within six months, a denial from Dr. Cameron and then, within a week, a change of view by Dr. Cameron of the 23rd?

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Did you know that the public was getting this kind of "yes, it is; no, it isn't" messages?

A The public was getting, actually, a very overwhelming clear message at this time. You have selected out of context a couple of statements on one side of the controversy. There were -- I won't count them. There were several.

But the overwhelming number of statements dealing with this issue was to the effect that there was a relationship between lung cancer and smoking cigarettes.

Q And you viewed -- you used the word controversy, right? Didn't you just say that?

A The Surgeon General used that word, yes, sir.

Q You just used it, yourself?

A Yes, sir.

Q And it means...

A That there were differences of opinion.

Q Okay. Differences of opinion, all right.

And you said I took -- I took it out of context?

A The context to which I refer was the historic record for this period, which has many pieces of information, many statements by many different people and many sources of information for the consumers.

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Q Okay, all right. Well, let's see, this is from -- actually, Defendants marked this exhibit into evidence or for identification during his cross-examination.

THE COURT: Which one is it? Which one is it?

THE CLERK: Sir, it's 29, evidence.

MR. WILNER: Well, it was first marked for identification.

THE CLERK: A for identification.

MR. WILNER: Then the Plaintiffs marked it as evidence, as 29.

THE COURT: Okay. Plaintiff's No. 29.

Q So is this Cause of Lung Cancer Unknown, Doctor Says -- what is the date, please? Grand Rapids, Herald Grand Rapids, Michigan, April 14, 1954. Is that out of context?

A In the sense that I said earlier. It is

out of the broad historical context to which I referred in my testimony.

Q How about Tobacco Cancer Link Still Inconclusive, Expert Says, from the "Miami Herald," January 7, '54, is that out of context?

A Yes, sir. No specific piece of information, no specific article represents common knowledge.

Q Doctor Urges Caution in Indicting

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Cigarettes, what does that mean? What does that mean, Doctor Urges Caution in Indicting Cigarettes?

A Well, the article says that a Boston doctor urged medical -- the medical profession to -- I can't read it very well, I'm sorry.

Q Okay. Well, I just -- what does it mean to urge caution before you indict something?

Never mind, I'll go on. I'll withdraw it. Doctor Lauds Smoking. What does laud mean?

A Praise.

Q Doctor Says Tobacco is Not the Definite Villain in Dallas.

Ô _ _õ((tm)_ 0*0*0*°_°__ ÔŒ Do you know who picked these out, incidentally?

A No, sir, I do not.

Q Doctor Weary of Tobacco Cancer Link From

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a Miami Beach Conference, Dr. William H. Hudson of Detroit, Michigan.

Were the public receiving these pieces of information?

A Obviously, it was, sir. It appeared in a Washington newspaper.

Q How, how did these pieces of information get to these papers, do you know?

A Well, it depends on the piece of information.

Q Do you know what a press release is?

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12 A Yes, sir.

13 Q What is a press release?

14 A A press release is something that I type

15 up and hope to hand to members of the press.

16 Q Why would you do that?

17 A Presumably to get some information in the

18 press.

19 Q Why would you want information in the

20 press?

21 A That's my -- that's an opinion I hold.

Ô _ _õ(›_ 0*0*0*°_°__ ÔŒ 22 Q Okay. Do you know whether this TIRC, the

23 TIRC sent out press releases to the -- to wire

24 services and newspapers all over the country?

25 A On occasion they did, yes, sir.

1 Q On occasion, is that your testimony?

2 A My testimony is that I know that they did

3 so on occasion. But I am not aware -- I have not

4 studied their press releases.

5 Q How much did they spend on public

6 relations?

7 A I do not know the answer to that. Do you

8 mean all over the time or one particular time?

9 Q For one year.

10 A I don't know the answer to that.

11 Q Expert Testimony is Divided on Weal or Woe

12 of Cigarette. Weal or woe meaning what?

13 A Woe -- I didn't hear the first word, I'm

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sorry.

Q Weal, w-e-a-l. Weal or woe.

A I'm sorry, I honestly don't know. I assume it means something good since woe means something bad.

Q Tie to Heavy Smoking is Held Not Definitely Established Cancer Aid Testifies, that's Joseph Heller.

Ô _ _õ(_ 0*0*0*°_°__ ÔŒ Isn't he, isn't he the guy on the tape?

Wasn't Heller the guy that we saw --

A He was director of the National Cancer Institute.

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Q Now, this is l953, right? "New York Times," 4/30/53. John Heller says not established, not definitely established, right?

A Yes, sir.

Q Heller, in 1955, when the tape is made says -- well, he says a lot of things. But he says he's believing it more and more, right?

A I believe -- I can't recall that in that particular tape. I would have to hear it again to remember that phrase.

But he also feels at one point that there's disagreement among some scientists at the National Cancer Institute.

Q And he says --

A And then later on he says that there's

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general agreement.

Q And he says to the public there's disagreement, right?

A Yes, sir.

Q New -- No Cancer Cigarette Proof, New AMA Chief Says. This is Walter Martin, 19-, what is it, '54, '53? Our copy didn't go through. Let me see,

'53. It says no proof.

And here is the one I was looking at earlier from 1954 quoting Dr. Cameron, Smoking Link

Seen by Cancer Society, Dr. Cameron Talks About Medical and Scientific -- I'm sorry, report the suspicion that cigarette smoking does to a degree, yet undetermined, increase the likelihood of developing cancer.

Was that a suspicion at that time?

A It was for him.

Q Everyone else knew it. But to the director of the American Cancer Society, it was only a suspicion?

A Well, the public had a very clear understanding that smoking was a significant risk to their health and that they knew, also, that it was related to lung cancer specifically and to other diseases.

Q Diverted view of lung cancer in this piece from the "Journal American." Do you see that?

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A I haven't seen the "Journal American," no.

Q How about the "Cincinnati Inquirer," did you see that?

A No, I did not look at the "Cincinnati Inquirer."

Q Evidence that smoking --

MR. WILNER: Zoom it out a little bit.

Q No evidence that smoking causes cancer of

the lung, Surgeon General tells the Inquirer.

So did the public get a chance to read things like this?

A Oh, I'm sure they did. That particular one, perhaps in Cincinnati.

Q Oh, just in Cincinnati?

A I don't know, sir. You're showing me a piece from Cincinnati.

Q So, you think that that particular piece just got picked up -- about the Surgeon General, just got picked up in Cincinnati?

A No, sir. What I'm saying is that when you look at a range of sources, including national newspapers and local newspapers, reading through tens of thousands of articles, articles like that almost certainly do appear.

The reason, as you asked me earlier, why -- I'm not familiar with each and every one of them is that I can't recall all ten thousand.

And second, that however many you put up

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21 based on my reading of the historic record that they
22 are a drop in the sea of the information, that they
23 are counteracted by literally thousands of articles.
24 Q A sea, huh?
25 A The word I used earlier is canvass, if you

1 prefer.
2 Q And also on this sea there's something
3 else, isn't there, called advertising? That's part
4 of the canvass, isn't it?
5 A Yes, sir.
6 Q And the -- how do you estimate the amount
7 of advertising that was done by the cigarette
8 industry?
9 MR. RILEY: Judge, that's beyond the
10 witness's scope of his direct examination. He was
11 not offered as an expert in advertising. I object.
12 MR. WILNER: He says it's part of the --
13 part of the canvass.
14 THE COURT: Well, let's approach side
15 bar.
16 (Side-bar conference held)
17 THE COURT: I thought specifically -- you
18 correct me if I'm wrong, but I thought before the
19 break earlier he specifically said he didn't look at
20 the advertisement, that he was not asked to look at
21 it and didn't consider it.
22 MR. WILNER: Well, that's really important

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for us to show that to make his opinion dead wrong, because he can't avoid an issue that hurts him just by saying I didn't consider it.

I have to show to him and demonstrate to the jury why he should have considered it.

MR. RILEY: He's already been through it, Judge.

MR. WILNER: I have to start it.

THE COURT: You can ask him that.

MR. WILNER: Sure.

THE COURT: No, I mean, why he doesn't think it's important.

MR. WILNER: I won't ask him a question quite as easy for him to get around as that. I mean, I have to be a little cleverer than that. I have to show --

THE COURT: I understand that. And I don't mean that you should ask him that way.

But you can ask him if he thinks that advertisement is of any significance in forming public opinion of what the common person knows and if that has any influence on the common people.

But I'm not going to let you take a hundred ads and say, Did this affect anybody's knowledge? I mean, because he's already said, and this is the reason why, no one piece by itself you can say affects what everybody knew. It's the

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totality of it.

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And if you want to show the jury that in arriving at that conclusion he left out an important segment that would be certainly contributed to that, that that advertisement contributes to it, if you want to ask him why he doesn't think -- if he doesn't think so, I mean, I'm talking about in a long --

MR. WILNER: Yes.

THE COURT: -- but you're still going into specifics, what about this ad, what about that ad, what about this article, what about that article? He keeps saying I can't tell you any one article.

MR. WILNER: I haven't asked him any specific ads. But I plan to show a few representative ones, you bet.

THE COURT: That depends on what context you show them in and whether or not Mr. Riley objects to it.

MR. WILNER: I understand.

THE COURT: I think you can certainly go into, you know, why wouldn't the advertisement contribute to the common knowledge. I mean, don't we get information from advertising and that sort of thing.

MR. WILNER: Sure. Well, the scope of

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the advertising is what I asked him about this time, which is what drew the objection. Obviously, if it's one ad it wouldn't make a difference. But if it's six billion dollars, it makes a difference.

THE COURT: He already said he didn't do a study of the advertising.

MR. RILEY: Exactly.

MR. WILNER: But he can't escape cross-examination by saying I didn't study that for this case, if he admits the advertising would affect the public knowledge.

THE COURT: He's got to do that first.

MR. WILNER: He did. But I'll do it again.

MR. RILEY: He's already done it, Your Honor.

THE COURT: To what extent it affects it?

MR. WILNER: That's up to him to qualify. But I've got him in deposition saying it makes a difference. So you bet, let me ask him that.

THE COURT: Okay.

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Q But we will do something else first.

Let's roll -- because I was about ready to roll the tape. I want to roll that first and then

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I'll get back to it.

(Video played in open court)

Lung and Cancer Society. Now, there's an upcoming skepticism in some --

MR. WILNER: Stop. We missed the introduction because we had rolled it before. So this is Dr. Charles Cameron, who we just talked about, okay. Let's go.

(Video played in open court)

And the statement is repeatedly made, we must have laboratory proof. I'm not sure what the nature of this laboratory proof is.

I assume the ultimate in proof would be the production of cancer of the lung in a living human being under conditions of experimental control. If that is the degree of proof which is required, I hope the experiment is never done.

There is nothing in the entire world of science which demands that degree of proof. I think that we can look back in medical history and cite a number of instances where statistics, a good deal recruited in the kind of statistics we are talking about here tonight, have succeeded in pointing rather directly at causes of disease well in advance of the laboratory identification of those specific

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causes.

For example, it was long known that milkmaids never got small pox, but they almost always got, as young girls, a little unimportant lesion, which was known as cow pox. And that led Jenner, on the basis of the statistical observations, to think that maybe cow pox immunized people against small pox. That was the seed from which the vaccination came and today the efficacy of vaccination is accepted by every person.

Finally, I would remind you that the great cholera epidemic of 1948 was evaded by the incredible simple device of removing the handle of a broad street pump when a single doctor noted that most people who had cholera had drunk of its water.

I think we are pretty much in that position in speaking about what we know about smoking and cancer of the lung today.

Now, there are those who would minimize the importance of the statistical evidence by saying, "but it is probably not the only cause."

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We are not concerned at this point whether it is the only cause or not. It may well not be the only cause. But if it is a cause of any amount at all, then we must find that fact out.

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The cigarette industry has insisted that no cause and effect relationship between smoking and

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lung cancer has ever been established. Nevertheless the industry has appropriated a million dollars to be placed at the disposal of a scientific advisory board by Dr. Cook Little of Bar Harbor, Maine.

This is Timothy Lee Hartmett, former president of a major tobacco firm and chairman of the Tobacco Industry Research Committee.

Mr. Murrow, I would like to quote from a statement released at the time the Tobacco Industry Research Committee was formed. At that time, we stated we accept an interest in people's health as a basic responsibility paramount to every other consideration in our business. And that's where we stand today.

I would like to emphasize that the industry has assured the scientific advisory board individually and collectively of complete freedom of that (unintelligible)...they extended the same freedom of action to investigators who are free to present their findings or publish their findings without clearance or prior approval from this board.

It is the esteemed scientist, Dr. Cook

Little, director of the Jacksonville Memorial Laboratory in Bar Harbor, Maine, agreed to serve as our scientific director.

I'm going to leave Sir Dr. Little to

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explain and discuss the scientific side of our work.

Next week Dr. Little will report about his investigations. There will be --

MR. WILNER: I don't have the next week.

Q But the last guy talking, wasn't that Edward R. Murrow?

A Yes, sir.

Q Did he have a cigarette in his mouth or in his hand through most of the program?

A As I recall, he did. I didn't see one in that clip.

Q How about the other programs, the other "See it Nows," week after week after week, did he have -- did he sit there and smoke the whole time?

A He was a heavy smoker. Whether he smoked the whole time, I can't say.

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Q Did he smoke after he had seen Dr. Cameron, I mean, the two weeks after was he still smoking?

A I don't recall that.

Q Well, you know the story of when Edward R. Murrow got lung cancer, don't you?

A No, sir.

Q You also mentioned Evarts H. Graham. Do you know the story of him getting lung cancer?

A If you mean do I know he contracted lung

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cancer, I do. I don't know what you mean by story.

Q Do you know when he wrote a letter about his getting lung cancer?

A No, sir.

Q Let me ask you about that tape.

Now, what we heard then was Dr. Cameron, who said -- well, first we heard from the AMA, who said he didn't believe statistics caused -- would be trusted or words to that effect.

You can prove anything with statistics. And I would rather be happy and live -- live shorter than live like a potato.

Then we heard from Cameron who said basically that -- that you can't sit around waiting for proof. You've got to take action to protect people. Do you remember?

A Yes, sir.

Q Was that the tenor?

I haven't shown the whole hour, but do you

think -- have I taken it out of context or have I shown pretty much both sides?

A Well, you certainly have indicated in -- in the side you showed, the clips you showed, divergent opinions among those people.

Q Then what we heard was with the TIRC, who actually got a piece on the show, didn't they?

A Yes, sir.

(Change of reporter, 4:10 p.m.)

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Q And they got -- in fact, they recited the Frank Statement or part of it, didn't they?

A He referred to it and quoted briefly from it.

Q On television in front of the entire country, right? Did a lot of people watch that show?

A I don't know how many people watched it, but I assume a great many people did.

Q Didn't you say before like that show was so important here for the -- you know, here it

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interviewed these scientists, and this knowledge was out there for good?

A What's significant about the show in my opinion is that as you do historical research on the relationship between smoking and health, that the controversy, as you call it, makes it into the -- all of the different media is an interesting and significant piece of information to us because it confirms what the reading, the broad reading, of all the information suggests.

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Q You just said the controversy as you call it. Those are the words you used?

A Yes, sir, they were.

Q And did the Brown & Williamson and

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American Tobacco Company, did they call it the cigarette controversy?

A I'm not aware of that.

Q Okay. Let me show you. Just a second. Then I'll ask you some other questions about that. There it is.

So let me ask you this to make sure my question is clear. Did the cigarette industry through the TIRC and others, and other organizations like the -- you know what the Tobacco Institute was?

A I think so.

Q What was it?

A I believe it was an industry

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representative.

Q It was an industry what?

A Representative organization.

Q I'm sorry, I didn't understand. It's an industry what?

A It's an organization representative of the tobacco industry.

Q "Representative," is that what you said?

A I'm sorry, I wasn't understanding your meaning.

A Yes, sir, that's what I said.

Q Which means that it was formed by the tobacco industry to do certain goals?

A Yes, sir.

Q And what were the goals?

A I'm not sure that I remember them. I don't remember them.

Q Is public relations something that affects what people believe in history?

A It may or may not.

Q Let me -- Hill, tab 9, public statement. Exhibit No. 3, tab 6. A scientific perspective on the cigarette controversy from the TIRC. Did they use the term "controversy"?

A In that document, yes.

Q In that document.

A Well, sir, that's the document you're presenting to me.

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Q Okay. Number -- AMA, No. 515. 6/8/62, letter from Harlow to Seavers. Who was Dr. Seavers?

A I don't know.

Q Was he on the Surgeon General's committee?

A I'm sorry, I don't know.

Q Who was E. S. Harlow?

A I don't know.

Q Is he from the American Tobacco Company?

A I don't know the answer to that.

Q Confirming our telephone conversation of

June 6, we are forwarding information to Dr. Rosenblatt and R. Rigdon, our first and second choices respectively, as authors for an article which could appear in the Journal of the American Medical Association taking the negative side of the controversy on smoking as it relates to health.

Did they use the term "controversy" there?

A In that letter, they do.

Q Public volume No. 33, The Cigarette Controversy, Eight Questions and Answers From 1969. Do you remember seeing that?

A I don't know where it's from. Do you have a source for it?

Q Sure. The Tobacco Institute: We believe that there are many controversial questions concerning smoking and health. They must ultimately be answered by further scientific research and new knowledge, and that free, informed public discussion

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19 is essential in the public interest.

20 Do you see that?

21 A Yes, sir.

Ô _ _õ(À_ 0*0*0*°_°__ ÔŒ 22 Q Well, did the Tobacco Institute take the

23 position publicly there that there was a controversy

24 and people believed different things?

25 A Sir, I haven't seen this document before

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1 you showed it to me. And as I stated in my

2 testimony, I have made no study of government --

3 excuse me, of industry documents such as this letter

4 or this press release or whatever it is. I don't

5 know what it is.

6 Q When you say "industry documents," what do

7 you mean by that?

8 A You just told me that this was a document

9 published by the Tobacco Institute.

10 Q And when you say "industry documents," you

11 mean internal industry documents?

12 A Well, what I believe I said was that I

13 haven't made a study of industry documents such as

14 this one or the letter which you put on the screen a

15 moment ago.

16 Q How about ones that were sent to the

17 public?

18 A How do you mean "sent to the public"? I

19 studied the information available to the public.

20 Q How did you know -- let's go to the first

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cigarette -- the first one, the Scientific
Perspective on the Cigarette Controversy. Let's
look at this for just a second. This is --
MR. RILEY: Your Honor, this is a document
that the witness knows nothing about, hasn't offered

testimony on it.
THE COURT: Wait a minute. Wait a minute.
Is that an objection or argument on the objection?
MR. RILEY: I'm sorry, I object.
THE COURT: If you want to make an
objection, come to the side bar.
MR. WILNER: I haven't asked a question
yet.
THE COURT: Ask the question.
MR. WILNER: Okay.
Q Who received this scientific perspective
document?
THE COURT: Okay, I'll sustain the
objection. He said he's never seen it. I don't
know how he would know who received it.
Q When you -- when you set out to determine
what the public received, how did you know whether
or not they had received or who had received
documents like that?
A When I refer to information available to
the public, I indicated in my testimony that the
sources we used were the full range of newspapers,

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national newspapers on the one hand to get a sense of what was covered nationally, and then local newspapers to get a sense of the entire canvass, as

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I've call it, of information.

Then we've looked at other sources to try and understand what constitutes public awareness and what we could legitimately call common knowledge. I referred to school textbooks. I referred to a whole range of sources, all of which consistently communicate the same understanding and the same message.

Q What --

A I did also say during -- excuse me. Just quickly. I also did say that in many of the articles that I looked at that there were statements by people referred to as representatives of the tobacco industry, including representatives of the TIRC, and that those were included on occasion in the articles that I reviewed.

Q We'll talk about them in a minute. How did you know what doctors were getting?

A I do not know what doctors were getting.

Q Are doctors important in what they believe and influencing what their patients do?

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A They certainly can be.

Q And when we're talking about cigarettes and potential health risks, are the opinions of

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doctors important?

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A They can be.

Q Are doctors opinion leaders in the issues of disease?

A Generally.

Q And did you make no attempt to find out what doctors were exposed to?

A What they were exposed to?

Q Yes, exposed.

A No, sir. I was interested in what doctors were saying as those statements were made available to the public.

Q Okay.

A And as I've indicated, they overwhelmingly speak of the health hazards of smoking.

Q No. 47 of the Public.

THE COURT: What is that?

MR. WILNER: Volume 3.

THE COURT: You mean in evidence?

MR. WILNER: Yes.

THE COURT: Plaintiff's 3?

MR. WILNER: Yes, Your Honor.

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MR. RILEY: Your Honor, I have the same objection to questions about this document as to the prior document.

MR. WILNER: I don't have a question yet.

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Q Do you know where this document was sent, published in 1979, called The Continuing Controversy by the Tobacco Institute?

A No, sir, I do not.

Q No. 51, same volume. Cigarette controversy, why more research is needed by the Tobacco Institute, 1984. Where did that one go?

A I do not know. I do not know where the tobacco industry sent its press releases or its documents.

Q Or what it says; you don't know that either?

A I don't know that document.

Q Could you have obtained these documents from the people that hired you?

A I honestly don't know. I never asked because it is not of primary interest in coming to an understanding of what people knew about the relationship between smoking and health through the period that we've been talking about.

Q Well, did you ask for the distribution of

the Frank Statement that we just heard read in 1955?

A No, sir, I did not.

Q Well, wasn't that read on national television in 1955 and referred to?

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A Yes, sir.
Q And didn't it -- wasn't it published in almost all the newspapers?
A It was published widely.
Q And but you didn't ask exactly where it went or what the plans for publication were, things to that effect?
A No, sir, I did not.
Q Did you ask to see any drafts of it before it was made?
A No, sir, I did not.
Q Okay. So you did go -- well, you didn't look at the cigarette industry -- the cigarette industry's own information. You did look at the hearings of the subcommittee on government operations, House of Representatives, 85th Congress, first session July 18 through 26, 1957, on false and misleading advertizing, filter-tip cigarettes? Did you look at that?
A I did, sir.
Q Where did you find it?
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A In the library.
Q How did you know it existed?
A It's referred to in the public press.
Q So you found the volume that we have in

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front of us?

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A I believe that's the same one.

Q Maybe you can't tell. I didn't mean to mislead you.

A It's cut off.

Q Okay. Now, how many hearings were there on cigarettes? When was the next one after 1957?

A I don't know the answer to that, I'm sorry.

Q Well, weren't there hearings when the 1966 Labeling Act was being discussed in Congress?

A Yes, sir.

Q Did you read those hearings?

A I read some of them, part of them. I don't know if they're the next ones after this.

Q So we have 1957, then the hearings prior to the 1966 act, which were conducted really when? When were those hearings conducted?

A The 1966 hearings, did you say? Would you repeat your question, I'm sorry.

Q I said that they were conducted when the 1966 act was being debated in Congress. When were the hearings conducted?

A To the best of my recollection, they were conducted the year prior, 1965.

Q All right. And then were there any other hearings conducted in the 1960s?

A I don't know the answer to that.

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Q Well, you testified that these '57 hearings were important in determining and getting information out to the people; didn't you say that?

A No, sir. What I believe I said was that those hearings are important because they appear in the public press and in the media and are referred to in an accessible manner. The same would be true of the second hearings that you've mentioned.

Q And how about any other -- how about 1969, were there hearings then?

A I don't know the answer to that.

Q How about 1984?

A I'm sorry, I don't know the answer to that.

Q Or 1981? Don't know that either?

A No, sir.

Q All right. So in these 1957 hearings, you said that there was information presented from some of the scientists that were proving that cigarettes caused cancer, right?

A I'm sorry, what I -- just now what I said was that those hearings are of interest to me as an historian because reports from them appear in the press as news and the basis of commentary.

Q How many scientists testified in these hearings who were hired by the Tobacco Institute Research Committee?

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A I don't know that.

Q Did you -- when you looked through the hearings, how many scientists testified that it wasn't proven that -- it wasn't established that cigarettes caused cancer?

A I remember that several did, but I'm sorry, I don't know how many.

Q Okay. Let me show you this document, which is from Public -- this is Tobacco and Health No. 3, tab 14, volume 1, No. 1, something called Tobacco and Health, a publication of the tobacco information committee representing tobacco manufacturers, growers and warehousemen.

Have you ever seen Tobacco and Health?

A No, sir.

Q Six experts state doubts on smoking cancer theory. Tell congressmen reason for position. Six experienced doctors and cancer research scientists have recently set forth to congressional subcommittee their reasons for not accepting the

theory that smoking causes lung cancer. Four of them testified before a congressional hearing and the other two submitted statements stating their position. Then it says, No single cause.

Dr. Clarence Cook Little -- who is he?

A He is the chairman of the Scientific Advisory Board of the Tobacco Industry Research

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Committee, it says.

Q Dr. Little, chairman of the Scientific Advisory Board of the Tobacco Industry Research Committee, was he the first chairman of the SAB?

A I believe he was.

Q Said that research and -- copy is bad -- research findings disprove a single simple striking cause-and-effect relationship between cigarette smoking and lung cancer.

Let's go down a little further to Experiments Negative. Another witness -- I'm sorry, Dr. Harry S. Greene, chairman of the department of pathology, Yale University, said the case against tobacco is based mostly upon statistical associations and some experimental work with animals. Do you know who Harry Greene was?

A Only what it says there.

Q Do you know how much money Harry Greene got from the TIRC?

A No, sir.

Q So this piece says at least six experts stated doubts on the smoking cancer theory before this congressional committee. You wouldn't dispute that?

A No, sir.

Q Did the committee pass anything in 1957?

A As I recall, it declined to pass or

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recommend legislation based on the balance of the testimony.

Q And people -- the people were exposed to that in the press, the fact that the committee heard the scientists and didn't do anything?

MR. RILEY: Object to the form, Your Honor.

THE COURT: I'll allow it if he can answer it.

A Well, I was going to ask myself, if I'm allowed, to explain what you mean by "exposed to," I'm sorry.

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Q Exposed in the press, that's all. Did people read in the press, look, these scientists couldn't agree and the committee didn't do anything?

A Well, certainly there was a report in the

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press of disagreements among scientists. That's certainly the case. But there's no disagreement in my mind reading the historical record as to what public opinion was or what the public thought about the risks of smoking.

Q Let me show you a piece of -- talking about Dr. Greene, from your synopsis of articles found in the Miami Herald 1957 -- you remember your synopsis?

A Yes, sir.

Q So this is actually what people would have

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seen, right?

A It would be one of many articles they would have seen.

Q Okay.

A As I tried to say earlier.

Q July 26, Cancer, Puff on, says Doc. Dr. Harry Greene, Yale Medical School, and Dr. Ian McDonald, USC Medical School, both smokers, scoffed at the idea that smoking could cause lung cancer. Appearing before the congressional hearings on filters, Dr. Greene claims he had little faith in statistics. He testified, If I have a cold coming on, I smoke a lot of cigarettes and wake up without a cold.

The subcommittee chairman, Representative John A. Blatnik (D, Minnesota) asked the tobacco industry to come forward and defend claims on filters and effect.

Was that in the "Miami Herald," too?

A What you just read? Yes, sir.

Q How about Ian McDonald, was he another person paid by TIRC?

A I believe he was.

Q And he was also in this TIRC publication Tobacco and Health, wasn't he? Also appearing, Dr. Ian McDonald, professor of surgery at the University of Southern California, school of

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medicine, a director of the American Cancer Society says, there's no evidence showing a cause and effect relationship?

A The reason I know about Dr. McDonald as opposed to the others about whom I unfortunately admit my ignorance is, Dr. McDonald stimulated a counterblast of criticism from his colleagues.

And the only reason I know he received money from the TIRC, that that was the subject of oh, many articles in"Consumer Reports," for example, "Red Book" magazine and other places. So that controversy, as you call it, ended up, as far as the

public was concerned, making Dr. McDonald, let's say, not quite credible.

Q So Dr. Ian McDonald, who was publicized by TIRC was criticized for conflict of interest?

A He was criticized for publishing articles while taking money from an industry representative.

Q And why was he criticized for that, though? I mean, why?

A His colleagues considered that to be inappropriate.

Q Inappropriate? Did you say inappropriate?

A Yes, sir.

Q Was he the only TIRC doctor who took money while he publicized anti -- or pro-cigarette views?

A I don't know the answer to that. He's the

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one --

MR. RILEY: Your Honor, I object to the form of the question, taking money. I think he's talking about funding research.

THE COURT: I'll sustain the objection to the form of the question.

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was that the tenor of the article?

A That was the allegation in the "Red Book" and "Consumer Report" articles.

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Q How about the same year, July 19th, an M.D. Linked Cigarettes to Cancer, Dr. Cuyler Hammond reiterated his belief that cigarette smoking is a causative factor of great importance in the occurrence of cancer.

Dr. Clarence Cook Little of the Tobacco Industry Research Committee disagreed saying nonsmokers get cancer. The vast majority of heavy smokers never get lung cancer from smoking. Neither gentlemen had an opinion on filtered cigarettes. The congressional committee is investigating whether or not tobacco companies are misleading the public by advertizing filters as healthy.

Do you see that?

A Yes, sir, I do.

Q And did Dr. Little, in fact, did he get his press, his line in the press at that time?

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18 A Yes, he did. In that article, certainly

19 he did.

20 Q Okay. Now, actually, this happens to be

21 1957, but there are many -- there were many articles
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23 A Yes, sir.

24 Q And you think the "Miami Herald" was

25 fairly representative of what was appearing in the

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1 general public media?

2 A Yes, sir.

3 Q Okay. 1954, on January 4th, a Frank

4 Statement to Cigarette Smokers appeared in the

5 Herald, right?

6 A Yes, sir, it did.

7 Q All the big tobacco companies were

8 listed. They wanted to inform the public that

9 research experiments performed to date have not been

10 conclusive in any manner, and that there are many

11 possible causes of cancer. Companies feel the

12 products we make are not injurious to health.

13 However, to show their concern for public welfare,

14 the companies are establishing the TIRC. The

15 committee will consist of various independent

16 scientists and researchers.

17 That was not only the Frank Statement, but

18 articles about the Frank Statement appeared, right?

19 A Yes, sir.

20 Q Next, Cancer Smoking Tie Termed

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21 Impossible. March 22nd, Dr. James Coughlan, writing
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23 to connect cancer and smoking. Dr. Coughlan said

24 tobacco is a plant like cabbage and lettuce, and

25 that elements from cigarette smoke are similar to

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1 the elements in the digestive system of humans. The

2 tars said to produce cancer can be found in cabbage,

3 lettuce, beets, and various other cooked foods; do

4 you see that?

5 A Yes, sir, I do.

6 Q Now, the idea that the carcinogens, or

7 whatever they are in smoke, also appear everywhere

8 else, isn't that something that the public -- many

9 people in the public believe?

10 A I can't answer that, sir. I would simply

11 point out that my effort as an historian is to take

12 the two articles that you've highlighted in the

13 context of the 50 or 60 and try to review those, and

14 as they are representative of the thousands that lie

15 behind them.

16 You could have read ten others on each of

17 those pages, and it would have been ten to one if

18 you want, and I can't -- that's not a scientific

19 estimate, but my words would be -- the overwhelming

20 majority of the press coverage would have been to

21 emphasize and reinforce the public awareness that
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23 Q So let's look at some others. Same year,
24 the Public Health Cancer Association voted to tell
25 people not to smoke. In response, Dr. Little of the

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1 Tobacco Industry Research Committee warned about
2 actions taking place based on incomplete
3 information. True? Is that part of it?
4 A Yes, sir.
5 Q Views seen as divided on smoking. In
6 response to a warning by the public health Cancer
7 Association about the dangers of smoking, Timothy
8 Hartmett of the Tobacco Industry Research Committee,
9 TIRC, said no agent causing human lung cancer has
10 been identified in tobacco, and no clinical evidence
11 has yet been established in tobacco as a cause of
12 human cancer. So you see that?
13 A Yes, sir, I do.
14 Q So I guess your point is that there are
15 more articles saying that it's bad than there are
16 saying that it's good?
17 A There are not just more articles, there's
18 an overwhelming number saying that. And that you
19 are -- as a professional historian, we're trained to
20 establish the entire context of information and not
21 to quote any specific piece out of context in order
Ô _ _õ(ä_ 0*0*0*°_°__ ÔŒ 22 -- and draw a conclusion from it.
23 Q Out of context. These are your notes,
24 aren't they?
25 A Yes, sir, the context of public awareness

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and public information.

(Change of reporter, 4:30 p.m.)

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Q February 24th, 1955, Doctors split over smoking and cancer, the meeting of surgeons in Atlanta. Doctors couldn't agree on whether or not smoking caused cancer according to this article, right?

A Yes.

Q Now, is this one of the articles you read and pulled out of the newspaper?

A Yes, sir.

Q June 29th, Tobacco expert raps cigarette cancer claim, Fred Royster, president of the Bright Belt Warehouse Association. What is that? What's Bright Belt?

A It's a form of tobacco, I believe. I'm not sure, sir. I better not make a comment when I'm not knowledgeable.

Q And W. T. Hoyt from TIRC angrily denounced attempts to discredit the tobacco industry with unsubstantiated and unproven medical plans then a tobacco growers 75 million dollars and federal, state and local government 150 million dollars in taxes. Was that also what people in the "Miami Herald" read?

A That was in the "Miami Herald," yes, sir.

Q Was there any reason that they wouldn't

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read that?

A I don't know. Well, we know what's in the "Miami Herald".

Q Okay. Let's see what was in it in 1958. March 12, 1958, Cigarette firm attacks roper -- report, I'm sorry. Attacks report.

Lewis Gruper, president of P. Lorillard, told the Washington Advertising Club it's become fashionable and key to the tobacco industry, its products, its advertising, it's ethics, even its honesty, in referring to the February 19th report by the House Government Operations Committee, which said that filter tipped advertising has been deceiving.

He says, Gruper, within the past four years Americans have been bombarded with statistically-based accusations of cause and effect relationship. As an industry we have countered -- sorry -- contended ourselves with pointing out perhaps too mildly that there are statistical claims only, that medically no case has been proven that the cause of any form of cancer is still unknown,

and our attackers do themselves, in a sense, a disservice by oversimplifying extremely complex situations.

He says that the industry does not believe that cigarettes are causative of cancer, but is

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trying with every method and weapon at our command to come up with a final answer.

Do you see that?

A Yes, sir, I do.

Q In the early '50s there was also published the "Reader's Digest." You put up some stories from the "Reader's Digest," do you remember?

A Yes, sir.

Q Was there -- was there ever by the tobacco industry a counterattack on "Reader's Digest"?

A I don't know.

Q What does a -- in the context of public relations and public knowledge, what is a counterattack?

A I'm sorry, sir. In the context of public relations and public knowledge?

Q Sure.

A I'm not sure that I understand that. But I would understand counterattack, as in sports or perhaps in militaries, as an attempt to get back at somebody who's attacking you.

Q Did the tobacco industry counterattack the "Reader's Digest" when they came out?

MR. RILEY: Asked and answered, Your Honor.

THE COURT: I think he said he didn't know.

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MR. WILNER: Okay.

Q Did you make any effort to find out?

A No, sir.

Q I'll get back to that in just a second.

Okay. I want to look at just a few more articles that appeared in the "Miami Herald." And you say the Herald was something that you looked to to support your opinions, right?

A It was one of the newspapers we looked at, yes, sir.

Q Okay. Let's look at March 2nd, 1959.

THE COURT: Where is that from?

MR. WILNER: That's his notes that he identified.

THE COURT: All right.

BY MR. WILNER:

Q March 9th -- March 7th, Kid Brothers, 2, Puffs Too. Do you see that? George Dowling's two sons, ages 6 and 2, have been smokers since they were 15 months old. If you tell a child to cut it out, they'll want to do it more, he said. He frowns

on the habits that says the doctor says he would outgrow the habit. She lights the cigarettes for them.

There are a lot -- now, she lights the cigarettes for them, period. And then there's a bracket. Do you see the bracket and something

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ending C. D.? It says, There are a lot of articles of this type mentioning kids that smoke. I think it shows the contrast between the nonchalant attitude towards smoking, but is slowly shifting towards the realization that smoking is hazardous to health, C. D.

Do you see that?

A Yes, sir.

Q C. D. is your research assistant, right?

A Yes, sir.

Q Do you agree it shows the contrast between the nonchalant attitude towards smoking that is slowly shifting towards the realization that smoking is hazardous?

A No, I don't.

Q You don't agree with C. D.?

A No, sir.

Q Okay. Let's go to March 22. My baby plays in smoke. The writer tells her, her

two-year-old son -- this must be another -- has learned to pretend smoking by imitating her. She comments on the influence of cigarettes in newspaper ads, on television, and smokers in the street and how difficult it was to keep the image of smoking away from her son.

This article was written -- and C. D., your research assistant, says, this article was

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written in humor, but in retrospect one can see just how intrusive cigarette ads were. Did you agree?

A No, sir.

Q You don't think that that ad or that newspaper indicates how in retrospect how intrusive cigarette ads were?

A No, sir. And I'm sorry my research assistant's not an expert in ads, and neither am I.

Q Okay. But you're claiming expertise in public opinion of some sort, aren't you?

A I'm claiming expertise in historical awareness.

Q And so ads are part of it, aren't they?

A They are part of it, yes, sir.

Q Okay. So when your research assistant says, One can see just how intrusive cigarette ads were based on this (indicating), you disagree?

A Yes, sir, I do.

Q March 26th, '59. 75,000 die needlessly. The American Cancer Society reported that 450,000 Americans develop cancer each year. It says that the two most rapidly increasing forms of cancer in older persons are leukemia and lung cancer. The report listed cigarettes as the chief cause of lung cancer, a conclusion the Tobacco Industry holds is unproven.

And then let's see what C. D. Says: There

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are so many contradictory articles such as this one that mention cigarette dangers only to negate itself by reminding readers that the tobacco institute strongly believes that smoking and lung cancer are not linked.

Was that your own research, sir, that said that?

A Yes. Unfortunately, my research assistant is not a trained historic. And that's a case of what we called present-mindedness?

Q "Unfortunately" is what you said, right?

A I did.

Fortunately for me C. D. also provides lots of information without editorial comment that I can evaluate on the basis of my training. And if

you'd look through those pages, I think you'll find that the segments that you've highlighted are really very few, relative to the full amount of information that she provided me.

Q And we will indeed refer to many more that we've highlighted, Doctor.

But let me ask you, were there other -- were there other pieces that your researcher wrote that you would expurgate, that you took out?

A As you can see, I did not.

Q No. I asked were there others that you --

A No, sir.

Q I mean, maybe this is one that you didn't

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catch.

A Are you suggesting that I've sort of taken materials out of the records that I gave you?

Q I don't know.

A I did not, sir. You have my research notes as you requested, which includes editorial comments by my research assistant.

Q So C. D., who was actually reading the reports -- these are the comments from Miss or Mr.

C. D.?

A It's a woman.

Q Miss C. D., okay.

A The research assistant in question summarized articles that I picked out and provided me with those summary notes, which you are now using.

Q Yeah. Well, let me ask you in a little more detail. What C. D. says is, There are so many contradictory articles such as this one that mention cigarette dangers only to negate itself by reminding readers that the Tobacco Institute strongly believes that smoking and lung cancer are not linked. You say you disagree?

A Yes. And what I said was that that's an example of present-mindedness on her part, and those editorial comments do not reflect my opinion at all.

Q Well, what in it don't you agree with?

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16 Let me break it down. First it says, There are so

17 many contradictory articles such as this one.

18 Was that true, were there so many?

19 A Not in my view, sir.

20 Q Oh, you don't think there were a lot that

21 said, cancer society claims but Pete Little of the
Ô _ _õ(ù_ 0*0*0*°_°__ ÔŒ 22 TIRC says I don't believe it? You think those are

23 rare?

24 A They're much less frequent than articles

25 in which no such contradiction or disagreement

1 occurs. The present-mindedness to which I refer is

2 that the young lady, who performed quite well

3 summarizing articles that I gave her, is

4 demonstrating her lack of historical training. She

5 today -- this was done about a year or so ago -- has

6 been overwhelmed with articles and finds it odd that

7 20 or 30 years ago there should be disagreements in

8 the press.

9 Q All right. Well, I'm taking this apart

10 and seeing what you agree with.

11 So you don't think there are so many

12 contradictory articles; your argument is with the

13 "so many," right?

14 A My argument -- well, my position, my

15 opinion, is that the articles to which you refer are

16 not -- that are referred to in the comments by

17 C. D., are a minute portion of the total number of

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articles available in the public press.

Q So you disagree with the "so many" part of this, right?

A That's -- where you've read to that point, that's what I disagree with, to the point to which you've read.

Q So let's go on. So you disagree with the "so many." That mention cigarette dangers only to

negate itself by reminding readers that the Tobacco Institute strongly believes, strongly believes, that smoking and lung cancer are not linked.

Do you disagree that this article negates itself by reminding readers that the tobacco industry strongly believe that smoking and lung cancer are not linked?

A Yes, sir, I -- sadly, I say, because it reflects badly upon my research assistant who was doing her best to provide me the information I wanted. I disagree with her evaluation and use of the word "negate," because she is, first of all, not doing all of the work that I have -- she did this for about three or four months -- and second is not trained to put information in context. And you're showing us how to take information out of context. The --

Q All right, Doctor. I think you've answered the question.

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A -- negate to which she refers is in the public mind, and that's --

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MR. WILNER: Your Honor, I move to strike. He's making a speech.

A I beg your pardon.

THE COURT: All right.

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MR. WILNER: Let me ask another question.

THE COURT: Okay.

Q March 31st, 1959, page 4-B, this is AP-UPI. That's another -- this says AP also. That means it came from the Associated Press, right?

A Yes, sir.

Q Big news organization, right?

A Yes, sir.

Q And how do you think Clarence Cook Little -- the report listed cigarettes as the chief cause of lung cancer, a conclusion that the tobacco industry holds is unproven.

How do you think the tobacco industry's view got into the Associated Press?

A I don't know the answer to that in this particular article. We know from other articles that correspondence went to people like Little to ask their opinion in order to present a variety of opinions in their articles.

Q So you think they went and asked Little, not the TIRC, shot them a barrage of press releases

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22 almost every day; that's your testimony?

23 A My testimony, sir, is that all I can tell

24 from the article is that Dr. Little is quoted. And

25 I do not know from this how that information was

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1 presented, except to suggest that if it's like all

2 other -- most other articles, somebody tried to go

3 out and get different opinions.

4 Q All right. Let's see what the next

5 article says. It talks about the agriculture

6 department reported that Americans smoked a record

7 of 436 billion cigarettes in 1958, or 185 packages,

8 3,700 smokes per person 15 years of age and older.

9 If overseas military sales -- and I won't

10 bother to read all of that -- are added, the total

11 U.S. cigarette output reached 470 billion, up 28

12 billion from 1957.

13 The agriculture department said the

14 increase can be attributed to the greater number of

15 women smoking, the larger teenage population, and

16 the tendency of people to switch from filter tips to

17 smoke more than when using non-filtered brands.

18 And C. D. says, If they had only taken

19 that last reason one step further to realize that

20 smokers smoke to maintain the same nicotine level,

21 regardless of how much nicotine is in each

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22 cigarette -- I won't ask you anything because I

23 don't know what that remark has to do with.

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MR. RILEY: I move to strike it, Your Honor.

MR. WILNER: That's all right. We'll withdraw it because I -- we'll go on to the next one.

BY MR. WILNER:

Q All right. Let's look at 19 -- wait. Thank you. Okay.

How about December 6th, 1959, cancer cigarette data challenged by Dr. Robert C. Hockett of the TIRC. This is a UPI. What's UPI?

A United Press International.

Q It goes all over the country?

A Yes, sir.

Q It says that Dr. Auerbach's findings -- so they're talking about what we talked about earlier about Dr. Auerbach, right?

A I believe so, sir.

Q -- are not accepted by many other pathologists. Recent contradictions to Dr. Auerbach's findings make three points clear, said Hockett. Who is Hockett?

A He's a representative of the Tobacco Industry Research Committee.

Q Paid by the Tobacco Industry Research Committee?

A I don't know that.

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Q Works for them, right?

A He's a member of it, that's all I know from this article. I don't know, sir.

Q Was he on the SAB?

A I honestly don't know.

Q Okay. Cancer cell changes found in human lungs occur in young and old. They're not limited to smokers. Lungs of heavy smokers may show no signs of such changes, and many pathologists disagree with Dr. Auerbach as to what a precancerous condition is.

So Dr. Hockett's remarks made it in, on December 6th, 1959, into the United Press International, true?

A Yes, sir.

Q And you don't think just -- that was just done in Miami, do you?

A I don't know.

Q Okay. Let's see what -- just a little bit. On December 11th, 1959, insufficient evidence, medical journal takes issue with cigarette cancer report. An editorial in the journal of the American Medical Association said there's insufficient evidence to warrant the assumption that cigarette smoking is the principal factor in the increase in

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lung cancer.

And this is the Associated Press, do you see that?

A Yes, sir.

Q And let's see what C. D. said about this without reading the whole thing for time.

It's incredible how difficult it was for some doctors to support any negative view of cigarette smoking. Even if the exact reason why smoking leads to lung cancer was not believed, it should not have been disregarded. The doctors spend more time second-guessing each other and pointing fingers than they do trying to find the link. In 1959 alone there were many studies that proved overwhelming coincidences that should have been taken a little more seriously. Do you see that?

A Yes, sir.

Q By C. D.?

A The word is "provided," I believe.

Q Provided.

Does C. D. indicate that the evidence in the public media was not being taken seriously?

A No, sir. What C. D. is referring to is her present minded view of the information that she has today about the link between smoking and lung

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cancer, and never having done historical research before, is commenting -- having provided me with a summary of the article, she's providing me with her editorial remarks about how she takes a different view.

Q And in December 18th, 1959, page 1, Harvard boys say, a heavy smoker? This study shows you may be a sissy, Harvard anthropologist, Dr. Carl C. Selzer.

Now, who is he?

A A Harvard anthropologist is all I know.

Q Yeah. You know he was on the TI -- he had received many grants from the TIRC, did you know that?

A No, sir.

Q And they publicized his work constantly. You didn't know that either?

A No, sir.

Q Okay.

MR. RILEY: Objection, Your Honor.

THE COURT: I'll sustain the objection to the form of the question.

BY MR. WILNER:

Q After conducting an anthropological study for 15 years, reported that there is a significant

association between the strength of the masculine component, which has a characteristic personality

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and behavioral component in the smoking habits of male subjects -- and it goes on to talk about the differences in smokers and nonsmokers -- and nonsmokers.

Now, do you -- are you familiar with the publication of the work by Dr. Seltzer under personality differences between smokers and nonsmokers?

A Only as it appears in articles like this one.

Q On December 22nd there is an editorial that says, to smoke or not to smoke, a commentary on the disagreement between the Surgeon General and the AMA over the issue of smoking and health. If Dr. Burney is right, the AMA has served the public poorly. If the AMA is right, Dr. Burney has been unduly alarming. Something more than controversy is needed in a matter so important to life and health.

The editorial ends with a statement that smoking is still an individual's decision. More smokers are smoking more than ever before, and lung cancer has increased tenfold since 1930.

Was there a disagreement between the

Surgeon General and the AMA as reported in the press in 1959?

A Certainly that editorial writer thought so.

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Q Well, do you think that that is -- is that out of context?

A Seizing upon a single article is what I refer to taking information out of historical context, yes, sir.

Q So it is. So that's why we're not seizing on a single one, sir, we're going through the list, if we can.

Do you -- did you type up -- did you leave anything out between December 18th and December 22nd, these two articles that happen to come together?

A I certainly didn't leave anything out. Those are my notes on the research done during that period.

Q Okay. And here's on December 30th: Cigarette cancer study imperfect. Two statisticians, Cornfield and Cochran say that while statistical studies of the relation between smoking and lung cancer are imperfect, they're the best approach now available.

Now which got the headline, the fact that they were imperfect or the fact that they're the approach now available?

A In that context that you're quoting, the headline was, cigarette cancer study imperfect.

Q So let's take this for example -- I don't

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have the study itself, I just have your notes -- but this says, cigarette cancer imperfect. And then in the body it says, well, these two people said that while they are imperfect, they're the best approach that's now available.

What's the message?

A The information -- I don't see a message in that one article. I see a message about public awareness in the thousands of articles. You have skipped over the dozens and dozens and dozens of articles in those same notes that almost all reflect the public awareness about the dangers of smoking.

There are articles all through there, I'm sure you can find them, that indicate differences of opinion among people quoted. And sadly you could also see comments by my young research assistant.

Q Okay. Let's look at May 5th, 1960. And this is about a case that was brought a long time ago called Pritchard versus Liggett & Myers. And

did you know that there were cigarette cases way back in 1960?

A Yes, sir. They were covered in the public press.

Q This one was evidently lost. Lung cancer victim loses suit. Federal jury rules against Otto Prichard in his case against Liggett & Myers. Prichard claimed that Chesterfields gave him lung

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cancer. And they go on to say -- I don't know, something.

The jury is therefore directed to find a verdict. William Blunt, president of L & M, said the medical testimony presented in this case included convincing evidence against the theory that cigarette smoking is a cause of cancer. We shall continue to support the scientific research, which may eventually answer one of the most vital questions of medical science, the cause and also the cure of cancer. Prichard will appear -- will appeal.

And C. D. says, whenever the tobacco industry answers questions about the TIRC, they always generalize cancer as a whole and never break it down to a productive and sincere study of lung cancer.

Is that her opinion from reading all of these medical articles -- I mean, all of these public articles?

A C. D., I think, is reflecting her own bias and opinion on that one.

Q Well, did she work for you and read through all of these news articles?

A Yes, sir. But I didn't attempt to form her own opinions. I was attempting to form an opinion about what the historical awareness of

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smoking was at the period you're looking at. And, frankly, I didn't try to change C. D.'s opinion.

Q Well, did you come to the same opinion that the TIRC never formed a productive and sincere study of lung cancer?

A No, sir, because that was not my objective.

Q Okay. Let's see another one in June 12th, 1960, from Phillip -- this is Phillip Myer, who must have been a columnist for the Herald, right, because it's not a news excerpt, right?

A Yes, sir.

Q Tobacco dangers cited, doctor attacks cigarette claims. Dr. William F. Miller addressed doctors at the American College of Chest Physicians

to start a vigorous education campaign to counter the effects of cigarette -- of tobacco advertising.

He said that without minimizing the dangers of lung cancer, chronic bronchitis and other respiratory diseases caused by smoking, provide an even more serious social problem -- I didn't read it right. He said that without minimizing the dangers of lung cancer, coma, chronic bronchitis and other respiratory diseases caused by smoking, provide an even more serious social problem in terms of suffering and disability.

Summarizing recent research findings, Dr.

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Miller said that adverse effects of tobacco are now self-evident, even though they may not be admitted by those with a vested interest in the tobacco industry.

He said that it has been established that a one-pack a day smoker in ten will die of lung cancer after 20 years of smoking, but four times that number will get chronic cough, progressive shortness of breath and frequent respiratory infections.

This is in bold: He accused the tobacco makers of glaring discrepancies because while they go to endless trouble and expense to convince the

public that smoking is a completely harmless and pleasurable act, they continue their efforts to develop effective filters expressly to remove the irritating, dangerous substances they would otherwise lead us to believe do not exist.

He proposed a five-point anti-smoking campaign to help smokers quit and pressure the tobacco industry to reduce the irritative properties of tobacco by whatever means possible.

Was that also in the Herald?

A Was that also in the Herald what?

Q Of course that was also in the Herald as well, wasn't it?

A Yes, sir.

Q So there are doctors speaking up saying

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16 the -- that actually the advertising that the

17 industry was doing was harmful. Was that also

18 published in the Herald?

19 A As we've just read, yes, sir.

20 Q And November 20th, 1960, in the Herald:

21 Mice thrive on cigarettes. The tobacco institute
Ô _ _õ(__ 0*0*0*°_°__ ÔŒ 22 reported a study that exposed 360 mice
to cigarette

23 smoke every day for extended periods, but not a

24 single animal got lung cancer.

25 The institute said that the scientific --

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1 the scientists exposed the mice to smoke for periods

2 from a month to a mouse lifetime, two years. The

3 daily doses of cigarettes was between a half and six

4 cigarettes a day. The mouse reactions varied from

5 none at all to the development of bronchitis, but

6 there was no relationship between the length of time

7 exposed and the bronchitis cases.

8 Was this a typical tobacco institute

9 article carried in the Associated Press, mice thrive

10 on cigarettes?

11 A I don't know that it's typical. It's one

12 that we find here in the Miami Herald.

13 (Change of reporters, 5:00 p.m.)

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Q And is that really the headline, Mice Thrive On Cigarettes?
A Yes, sir.
Q How many of the mice died -- and this is C.D.'s comments: How many of the mice died in how short a period of time from other causes before they even had the chance to -- the chance to develop lung cancer. If a mouse's lifetime is two years, then what was the cause of death if they had no reaction at all to the smoke? It is hard to believe that such a study was reported without any valid data to back up the results.
C.D. says that, right?
A Yes, sir.
Q Now, was she right?
A I don't agree with that, sir. All I can say is that C.D. is consistent in her opinion.
Q And the -- did the newspapers carry articles from the Tobacco Institute like, "Mice Thrive On Cigarettes," which didn't have any valid data to back it up but nevertheless carried the headline?
A Sir, I'm sorry. I didn't mean to interrupt. I apologize. C.D. is not a trained historian, and she certainly is not a trained statistician.
Q Well, I know my question was, I guess -- do you say that this is the only article that -- let's say

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of the year or of the month that came out of the Tobacco Institute that talked about some contradiction they had found in the medicine?
A I don't know how many articles or press releases came out of the Tobacco Institute.
Q Okay. April 12th, '61. April 12th, '61, page 18, page 1-B. "1-B," is that the first page of section B?
A Yes, sir.

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10 Q It's like the big local news, right?
11 A Generally. I don't recall in 1961 exactly
12 what the heading of that would be.
13 Q Helen Hart, consumer services director for a
14 cigarette firm, issued a short course in the don'ts for
15 women smokers who want to smoke like ladies. Her
16 rogues' gallery included ashes asphalt, flickenmiss --
17 "flickenmiss," I guess that means flick the ashes and
18 miss or something, right -- and Katherine Killchivalry
19 gives advice on holding, exhaling, ashing, talking while
20 smoking. The simplest approach to correct smoking is
Ô _ _õ(__ 0*0*0*°_°__ ÔŒ 21 common sense and basic courtesy.
22 And C.D. says, By addressing smoking
23 etiquette for ladies, Miss Hart in a sense teaches women
24 how smoking can be glamorous. Giving smoking ladylike
25 qualities essentially supports it's fashionability and

1 encourages smoking among those striving to be as
2 ladylike as possible.
3 Do you agree?
4 A No, sir, I'm sorry. I have to give C.D.
5 rather low marks for present-mindedness.
6 Q So, C.D. just didn't get it when she said
7 that when you have a big article on page 1-B on how to
8 hold the cigarette and how to flick the ash, that that
9 does not support its fashionability and encourage
10 smoking among those striving to be as ladylike as
11 possible. She just didn't get it?
12 A Well, she is upset from her perspective
13 today, or last year, that anybody would trivialize women
14 in this fashion. And I say this is present-mindedness
15 precisely because our attitudes towards women today are
16 quite different from what they were in 1961, and the
17 social context was different.
18 Q Well, is she perhaps --
19 A And it's her opinion, not mine.
20 Q Is she perhaps angry not of the
Ô _ _õ(__ 0*0*0*°_°__ ÔŒ 21 trivialization of women but of the trivialization of
22 smoking?
23 A No, sir.
24 Q No?
25 A She is angry at how women --

1 Q Have you talked to her about this?
2 A I have.
3 Q Just about this one piece?
4 A Yes, sir.
5 Q So you went in and you said, Oh, you are just
6 angry about women; you are not angry about smoking?
7 A I asked her what she was angry about.
8 Q Last one for the day, if we might, or I guess
9 we could go on, but -- all right. But I am getting
10 tired. All right.
11 June 4th, 1961. This is page 6-B of the

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"Miami Herald." "Cancer in Cigarettes; What's Being Done. The Tobacco Industry Research Committee says the article by its very existence acknowledges questions exist. It began in 1954 and has spent more than four million dollars to support independent research, about half of it in cancer with the substantial amount in heart disease.

Now, before we go on, how would the newspaper all of a sudden come to write about the TIRC? Why?

Ô _ _õ(!_ 0*0*0*°_°__ ÔŒ 21 A I don't know the answer to that. This was a correspondent.

Q A who?

A A correspondent.

Q You mean the guy who wrote it?

Ô _ __"_ 0*0*0*°_°__ Ô_

A Yes, sir.

Q Okay. I mean, apropos of what? Did he just all of a sudden start writing, Cancer and Cigarettes; What's Being Done?

A I can't speculate about that. I don't know the reason for his writing that particular article.

Q Okay. Doctor, Clarence Cook Little, scientific director to the TIRC says, I think it helps officers and others feel this evidence is strong enough to conduct an educational campaign. They not only have the right to do so but the duty.

I would, like them, point out the facts that 90 percent of the worse statistical population you could pick, those at age 80 who have been heavy smokers for 40 to 50 years do not die of lung cancer; that 10 percent of them do; that at age 50 among the heavy smokers perhaps 2 percent -- perhaps 2 percent at most die of lung cancer; that lung cancer is still a relatively rare disease, but there are questions about the diagnosis of it.

Ô _ _õ(#_ 0*0*0*°_°__ ÔŒ 21 The article briefly mentions the American Heart Association's belief that smoking may contribute to or accelerate heart disease, and that the U.S. Public Health Service chief declared in 1959, The weight of the evidence is increasingly pointing in one direction;

Ô _ __$_ 0*0*0*°_°__ Ô_

excessive smoking is one of the causative factors in lung cancer.

So does -- so far the article has a quote from Pete Little, C. C. Little of the TIRC, and then a quote from the American Cancer Society so far, right?

A Yes, sir.

Q Okay. The article states that there is a little -- little cohesiveness so far to the findings of the research supported by TIRC.

"Cohesiveness" in this Popular Press means what?

A Hold together.

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Q So that there is little cohesiveness to the findings of the research. Studies currently conducted by the TIRC were mentioned. Tissue culture, human personality differences, genetics, pathology, perhaps lung cancers begin in another part of the body, and animal cancers. Nicotine is also being studied. One researcher it was reported said that the nicotine effect on blood pressure and pulse was similar to the effect of drinking a cold glass of water or dancing a slow Waltz.

Do you see that?

A Yes, sir.

Q Does that sound like Tobacco Institute words that trivialize the effects of cigarettes?

A Well, in this particular context it certainly refers to a researcher who is trying to --

Q Trivialize?

A -- diminish the impact of it.

Q Okay. Here is C.D.'s comments.

This is a fine example of what the tobacco industry was hoping to obtain by beginning the TIRC, good PR. "PR" is what?

A Public relations.

Q So, this -- C.D. means "this" is this article, right? Isn't that what she meant by "this"?

A That is her opinion, her editorial opinion, with which I do not agree.

Q I understand. The word "this" means the article we have been talking about, right?

A Yes, sir.

Q So this article is a fine example of what the tobacco industry was hoping to obtain by beginning the TIRC, PR, which is public relations, right?

A That's what she says.

Q And that -- I mean, you know what the term "PR" means, right?

A Yes, sir. It's public relations.

Q All right. This article makes the TIRC look like an organization willing to put its own lifeblood on

the line for the health of the people. The research that was mentioned seemed fairly independent of smoking and health. It sounded more like a series of tests to blame something else for lung cancer without actually studying smoking's specific effect on health.

According to Ashes to Ashes in which Klugler went through the studies funded by the TIRC, many studies had very little to do with smoking and health, and those studies that suggested unhealthly links to smoking did not have their grants renewed by TIRC. C.C. Little highly doubted the validity of statistics and only trusted laboratory truth.

C.D. gave you those comments, didn't she?

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A Yes, she did.
Q Do you agree?
A I do not.
Q So you know about the grants to the TIRC?
A I know From Ashes to Ashes.
Q Well, I mean, let me -- do you have an opinion about whether the grants to the TIRC that did find a connection were not renewed?
A Sir, I only know the allegation by the author of Ashes to Ashes.
Q So you don't know whether what she says is true or false?

A That's correct.
Q Okay.
THE COURT: Do you want to approach the side bar.
(Side-bar conference, Court and counsel)
THE COURT: Ladies and gentlemen, obviously we are going break for the evening at this point. It appears that we may not -- in fact, there's a good chance that we won't finish this week. Is that a real hardship for anybody if we go into next week like Monday or Tuesday or perhaps Wednesday of next week?
Also, we will start at 8 o'clock tomorrow morning. So, please do not discuss the case among yourselves or with anyone else. And as far as the jury is concerned, we are in recess until 8 o'clock tomorrow morning. And I will see the attorneys in chambers in about five minutes. We will be in recess until.
THE BAILIFF: All rise, please. Court is in recess until 8 o'clock tomorrow morning.
(The proceedings were adjourned at 5:15 p.m., to be reconvened at 8:00 a.m., June 2, 1998.)

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